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CAUSE NO. 12,764

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
VS.	§	TITUS COUNTY, TEXAS
	§	
BILLY JOE WARDLOW	§	76TH JUDICIAL DISTRICT

STATEMENT OF FACTS

VOIR DIRE EXAMINATION

October 31, 1994

VOLUME 15 of 43 volumes

FILED IN  
COURT OF CRIMINAL APPEALS

OCT 11 1995

Troy C. Bennett, Jr., Clerk

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## VOLUME 15

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Before Honorable Gary R. Stephens  
Judge by Judicial Assignment  
(Venue changed from Morris County, Texas)

APPEARANCES

ATTORNEYS FOR THE STATE OF TEXAS:

MR. RICHARD TOWNSEND  
District Attorney  
Morris County Texas  
Morris County Courthouse  
Daingerfield, Texas 75638

and

MR. RANDY LEE  
Assistant District Attorney  
Cass County Texas  
P.O. Box 940  
Linden, Texas 75563

1 ATTORNEYS FOR THE DEFENDANT:

2 MR. BIRD OLD, III  
3 Old, Rolston & Old  
4 P.O. Box 448  
Mt. Pleasant, Texas 75456-0448

5 and

6 MR. LANCE HINSON  
7 Law Offices of Danny Woodson  
8 P.O. Box 399  
9 Mt. Pleasant, Texas 75456-0399  
10  
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1                   On the 31st day of October, 1994, the  
2                   above-entitled and numbered cause came on for hearing  
3                   before said Honorable Court, Judge Gary R. Stephens of  
4                   Midlothian, Texas, serving by judicial assignment in the  
5                   District Court of Titus County, Texas, on change of venue  
6                   from Morris County, Texas, and the following proceedings  
7                   were had:

8                   THE COURT: I guess the first  
9                   thing we need to do before we bring the juror in is to  
10                  get on the record.

11                  Mr. Old, when we left here last week  
12                  there was a question as to how many jurors were informed  
13                  that the parole law provides for a 40 year calendar time  
14                  to be served on this case when in truth and in fact we  
15                  discovered it was 35 years after Mr. Townsend did some  
16                  research.

17                  The Reporter tells me that three of the  
18                  four jurors we were concerned about have or were told  
19                  that the parole transaction would be 40 years as opposed  
20                  to 35.

21                  I cannot remember those three jurors  
22                  names, I know Mr. Cox, the police officer was not one of  
23                  them, it was the other three and I'm sure that both sides  
24                  can find out from the record or from Lloyd which of those  
25                  three I'm talking about.

1 I'm not going to make you do it today  
2 but tomorrow morning I want to know whether you want to  
3 -- whether you are in a position after we get caught up  
4 to make your choice in strikes and jury selection or  
5 whether you need to talk to those three.

6 And Mr. Townsend, I need the same for  
7 you -- from you.

8 MR. OLD: I believe if I have  
9 got the order right it would be Littles, Edwards and  
10 Henry.

11 THE COURT: Mr. Townsend,  
12 Littles and Edwards.

13 MR. OLD: Your Honor, unless  
14 -- excuse me, the next to the last witness that testified  
15 and perhaps the last juror who was totally questioned did  
16 not disqualify, Officer Alexander?

17 THE COURT: Yes. The one who  
18 said they got a teletype?

19 MR. OLD: Yes.

20 THE COURT: We also did some  
21 checking on that. Has the information been given to you?

22 MR. OLD: No, sir. It hasn't.

23 MR. HINSON: No.

24 THE COURT: I have got some  
25 information from our Bailiff, he can either state it into

1 the record what he found or I will swear him in and he  
2 can do so under oath.

3 Do you wish to have him sworn?

4 We don't have any information, the  
5 bottom line, but I do want explanation in the record.

6 Do you want me to swear him?

7 MR. OLD: Perhaps it would be  
8 best, it's not a matter of --

9 THE COURT: I understand.

10  
11 (Witness sworn.)

12  
13 LEO SCHAKEL, the Court Bailiff,  
14 was called as a witness and, having been first duly sworn  
15 by the Court, testified as follows:

16  
17 THE COURT: You may lower your  
18 hand.

19 State your name, please.

20 THE WITNESS: Leo Schakel.

21 THE COURT: Officer or  
22 Sheriff, I asked you when we recessed Thursday to get a  
23 copy of the teletype that our last juror referred to, I  
24 did not want the officer receiving the teletype himself.

25 So would you please state into the

1 record what efforts you made to locate that teletype and  
2 the results.

3 THE WITNESS: Yes, sir. I,  
4 when I left the courthouse I went directly to the police  
5 department here in Mount Pleasant, checked with the  
6 dispatcher, we went through the records for June 14th of  
7 that year.

8 I was -- it is a reasonable teletype  
9 sent out to Region 1, which we are in Region 1, they keep  
10 them for 30 days and disposed of them.

11 I was sent directly to the Mount  
12 Pleasant Police Department, a permanent record is kept,  
13 we went through the permanent records and there was no  
14 copy in there so most likely it was just a Region 1 send-  
15 out to all the departments in the area.

16 THE COURT: Did you make any  
17 attempt to contact Titus County?

18 THE WITNESS: No, I didn't,  
19 Your Honor.

20 THE COURT: Do you have any  
21 questions, Mr. Old?

22 MR. OLD: No.

23 THE COURT: Thank you,  
24 Sheriff.

25 Mr. Townsend, would you check with the

1 Titus County Sheriff's Office and find out what teletype  
2 went out on June 14th too?

3 MR. TOWNSEND: "Morris County"  
4 or "Titus?"

5 THE COURT: Check with Morris,  
6 I'm sorry, check with Morris County and find out what  
7 teletype they sent out that would have been received by  
8 Titus or any other county.

9 MR. TOWNSEND: Okay.

10 THE COURT: See if you can  
11 locate them for us in the next day or two.

12 MR. TOWNSEND: The crime  
13 occurred on the 14th, it wasn't discovered until late  
14 that evening, it might -- they might not have sent any  
15 to the county until --

16 THE WITNESS: We went through  
17 a couple of days beyond the 14th.

18 MR. TOWNSEND: I'll check.

19 THE COURT: Check and see if  
20 you can find it then we will just hold this issue for a  
21 day or so.

22 Wednesday morning I would like to have  
23 -- and see if you can give me an answer and I propose  
24 that we qualify as many jurors as we can between now and  
25 Wednesday afternoon.

1                   Wednesday afternoon I would also like  
2                   announcements or whether or not we need to re-voir dire  
3                   the three jurors with the wrong information and then  
4                   Thursday afternoon I think the last thing we'll do before  
5                   I leave is to get on the record with our preemptory  
6                   strikes and see where we stand. We should have several  
7                   qualified by then.

8                   MR. TOWNSEND: Do the striking  
9                   Thursday morning or afternoon?

10                  THE COURT: I figured we would  
11                  do it Thursday afternoon, all jurors through Wednesday,  
12                  I won't make you include those for Thursday morning.

13                  I think we are in line.

14                  MR. LEE: If it's any help,  
15                  I happened to be at the Atlanta Police Department at the  
16                  time that this teletype went out, they received a  
17                  teletype to be on the lookout for the truck on the day,  
18                  I don't remember what day, it may have been the next day.  
19                  I assume it was a Region 1 teletype.

20                  THE COURT: Thank you, Mr.  
21                  Lee.

22                  Do you have any other matters to take  
23                  up before we resume with our jurors?

24                  I take it we don't. Let's bring in  
25                  Glenda Morris.

1 THE BAILIFF: Watch your step,  
2 ma'am. Have a seat right there. (Indicating)  
3

4 GLENDA SUE MORRIS, Potential Juror #127  
5 was called as a Potential Juror and, having been  
6 previously sworn by the Court, testified as follows:  
7

8 THE COURT: Good morning or  
9 good afternoon, ma'am.

10 THE POTENTIAL JUROR: Good  
11 afternoon.

12 THE COURT: How are you?

13 THE POTENTIAL JUROR: Just  
14 fine.

15 THE COURT: Ma'am, for the  
16 -- well, I was going to ask you, here it is; for the  
17 record are you "Glenda Morris?"

18 THE POTENTIAL JUROR: Yes,  
19 sir. I am.

20 THE COURT: This is Juror 14.

21 Ma'am, I am Gary Stephens, I am  
22 presiding over the jury selection, we have two lawyers  
23 representing the State of Texas, we have the elected  
24 District Attorney from Morris County, Mr. Richard  
25 Townsend, we have the elected District Attorney that will

1 be taking office in Cass County who is working with us  
2 on this case until then and that's Mr. Randall Lee.

3 There are two Defense Attorneys present,  
4 Mr. Bird Old, III.

5 MR. OLD: Hello.

6 THE COURT: Mr. Lance Hinson.

7 Next to Mr. Hinson is the person  
8 charged, Mr. Billy Wardlow.

9 Ma'am, the lawyers have read your  
10 questionnaire and they are familiar with your answers,  
11 they are going to discuss some of those answers with you  
12 and they are also going to talk to you about the  
13 principles of law involved in a death penalty case.

14 You will be asked a lot of questions and  
15 the answers will let us know whether or not to put you  
16 on the jury.

17 In order to be a juror you must be able  
18 to understand, follow the law but you don't necessarily  
19 have to agree with our law. It's kind of like filing  
20 income tax, you may not want to but as long as we comply  
21 with the law we have done what we are supposed to do.

22 If there's some law that you disagree  
23 with that is involved in a trial but you can set aside  
24 your disagreement with the law then you are qualified so  
25 long as you can follow that law but if you disagree with

1 the law to such an extent that you can't follow it then  
2 you are not qualified.

3 So we need to know what you think about  
4 the law that will be involved in the type of case that  
5 will be tried, we need to know how you think and what you  
6 think and the only way as lawyers we know to find out is  
7 to just ask.

8 So I hope that you just open up, relax,  
9 be honest with us, because there's no right or wrong  
10 answer and there's no right or wrong opinions, whether  
11 your opinions are the same as ours is totally immaterial,  
12 we just want to know where you are coming from so we can  
13 decide if this is the appropriate case for you.

14 Most jurors we talk to are qualified,  
15 meaning they can understand the law but that still  
16 doesn't mean that they are appropriate jurors.

17 So just relax, tell us whatever you  
18 think we need to know and answer our questions and if you  
19 think there is something that will effect your ability  
20 to be on this case and we don't ask you volunteer the  
21 information.

22 Do you have any questions?

23 THE POTENTIAL JUROR: Not at  
24 this point.

25 THE COURT: The State may

1 proceed.

2  
3 VOIR DIRE EXAMINATION

4 BY MR. TOWNSEND

5  
6 Q Thank you, Your Honor.

7 Ms. Morris, I am Richard Townsend, I  
8 represent the State of Texas along with Randy Lee here  
9 in this capital murder trial and as the Judge said,  
10 there's really no right or wrong answer to the questions  
11 we ask, we just really want to know what you think and  
12 kind of get an idea of what your opinions are about our  
13 justice system and in particular about the death penalty.

14 I want to be honest with you from the  
15 start and the State of Texas in this case is actively  
16 seeking the death penalty against this Defendant Billy  
17 Wardlow.

18 Now, I know that's not a pleasant thing  
19 to say or pleasant thing to think about but I want you  
20 to know right up front that that's what we are here for,  
21 that's what we are trying to do.

22 I had a chance to look at your  
23 questionnaire and I would just like at this time just to  
24 give you an opportunity to just tell us how you feel  
25 about the death penalty in your own words.

1           A           Well, I don't think that any of us want to see  
2           someone put to death but I am sure there are times when  
3           people do something so horrendous that they deserve to  
4           be put to death for that action.

5           Q           And that's -- that is your answer you just gave  
6           is kind of reflected in your answer to the questionnaire  
7           that said you thought it was appropriate in some murder  
8           cases?

9           A           Yes.

10          Q           Is that a feeling you have always had since you  
11          were an adult, you might say or has your position changed  
12          over the years?

13          A           No. I don't think it's a feeling that I have  
14          always had. I think that at one time I really felt like  
15          that maybe the death penalty was not appropriate for any  
16          case but I feel like taking someone else's life was just  
17          wrong under any circumstances.

18          Q           Yes.

19          A           But I think as you get older and live life a  
20          little longer you realize that there are some actions  
21          that you really cannot decide that someone has the right  
22          to live if they have committed that particular crime.

23          Q           Okay. Ms. Morris, if you are selected on the  
24          jury you might to come to a point in the trial where the  
25          jury was making that decision after the person was found

1 guilty, then you would go back and make the decision  
2 about the death penalty.

3 Do you know of any reason why you  
4 couldn't serve on a jury and make the decision that is  
5 required in order to see that the person received the  
6 death penalty and was executed? If you thought that the  
7 facts and the evidence were appropriate for that could  
8 you do it?

9 A Could I do it?

10 Yes. I could.

11 Q Okay. I'll talk to you a little bit about  
12 murder cases; in Texas there are basically two types of  
13 murder cases in Texas, one being what I would call just  
14 "plain murder" or "non-capital murder" where someone has  
15 intentionally or knowingly caused the death of another  
16 individual and that is to say without an excuse such as  
17 self defense or a legal justification such as self  
18 defense or an accident or something like that.

19 In Texas that is punishable by up to a  
20 life sentence but is not punishable by the death penalty,  
21 not just that non-capital plain murder.

22 On the other hand there is what we call  
23 "capital murder", capital murder is punishable by the  
24 death penalty in Texas and that is the type murder where  
25 you have got a plain murder like I just talked about plus

1 something else. And that "plus something else" is the  
2 murder of a police officer or fireman in the line of  
3 duty, multiple murder situation where more than one  
4 person is murdered in the same episode, murder that takes  
5 place during the commission of a robbery or burglary or  
6 rape.

7 Those are what we call "capital murder."

8 There is a sheet of paper up there that  
9 is in this case and I believe that it's marked with a  
10 circle and number one, it may have some other markings  
11 on it, too.

12 THE BAILIFF: Right here,  
13 ma'am. (Indicating)

14 MR. TOWNSEND: If you will  
15 just read to yourself and I will talk to you about it in  
16 a minute.

17 Ms. Morris, that is the indictment in  
18 this case or a copy of it.

19 Can you see by looking at that  
20 indictment that if the State could prove everything on  
21 there that that would not be just a plain murder but  
22 would be a capital murder?

23 THE POTENTIAL JUROR: Yes.  
24 I can see that.

25 Q (BY MR. TOWNSEND) Because it alleges a murder

1 and also alleges a robbery.

2 Okay. What we need in the way of jurors  
3 in this case or any capital murder case is those people  
4 who can keep an open mind throughout the trial.

5 And when I say that I mean as you are  
6 going through hearing evidence and deciding first if the  
7 defendant is guilty or not guilty at that point you are  
8 not concerned with what his punishment is going to be on  
9 down the road. You are just strictly determining whether  
10 he's guilty or innocent.

11 If he's found not guilty, of course this  
12 trial is over, everybody goes home.

13 But if the defendant is found guilty  
14 then you go into what is called the "punishment hearing"  
15 where if the person is found guilty of capital murder the  
16 punishment hearing is to decide whether the person would  
17 receive a life sentence or death penalty. Those are the  
18 only two options.

19 Now, in making that decision we won't  
20 go back there and just vote for life or vote for death,  
21 you will have a punishment hearing and at that time you  
22 will hear evidence that relates not to whether the person  
23 is guilty or not guilty because you have already made  
24 this decision but it relates strictly as to what the  
25 proper punishment for the crime should be.

1                   You might hear evidence of prior bad  
2                   acts by the defendant, prior criminal episodes by the  
3                   defendant, you might hear evidence of the defendant's  
4                   age, family background, psychological testimony, just  
5                   throw the kitchen sink in there because you hear just  
6                   about everything plus whatever evidence you heard during  
7                   the punishment hearing.

8                   We have got to have the type of juror  
9                   who's not going to say "I know the person's guilty of  
10                  capital murder, I think he needs to get the death  
11                  penalty" or "I think he needs a life sentence."

12                  We need jurors that cannot make that  
13                  decision at that time, that point, but wait until they  
14                  have heard all the evidence during the punishment hearing  
15                  before making their decision on that.

16                  Do you believe that you could do that?

17                  A            Yes. I do.

18                  Q            Okay. A little bit about what I've been  
19                  talking about, to refer to that a little more, there is  
20                  what I call the "flow chart" up there that looks like  
21                  this.

22                               THE COURT: To your left.

23                               (Indicating)

24                               MR. TOWNSEND: If you will  
25                               just kind of look at that and go along with me.

1                   At the top of the page you can see where  
2                   the guilt or innocence phase of the trial is, right  
3                   underneath this that says, "Evidence", that's what I was  
4                   talking about, you are going to hear evidence as to  
5                   whether the defendant is guilty or not guilty and if he's  
6                   not guilty then of course the trial is over, if you found  
7                   him guilty you go to the next phase.

8                   The next phase is called "the punishment  
9                   phase" and that's when -- that's when I said you are  
10                  going to hear more evidence, not in regard to whether the  
11                  defendant is guilty or innocent because that decision has  
12                  been made but more evidence as to what the proper  
13                  punishment should be.

14                  Then you are going to go -- the jury as  
15                  a whole will go back and deliberate and they will vote  
16                  on Special Issues.

17                  Now, that Special Issue is a question  
18                  that you answer "Yes" or "No."

19                  For right now don't worry about what  
20                  that question is because I will go over this with you in  
21                  just a minute.

22                  But you are going to answer Special  
23                  Issue #1, if the jury's answer to that is "No" then the  
24                  defendant -- the defendant would automatically receive  
25                  a life sentence.

1                   However, if your answer is "Yes" then  
2                   you are going to Special Issue #2.

3                   Now, Special Issue #2, if that question  
4                   is answered "Yes" then the defendant would get a life  
5                   sentence, if that answer is "No" then the defendant would  
6                   receive the death penalty.

7                   So basically what you are looking at is  
8                   after Special Issue #1 and #2, you have looked at all  
9                   this evidence and voted on those, if you vote "Yes" on  
10                  Number One, "No" on Number Two the defendant will receive  
11                  the death penalty, if you vote any other way the  
12                  defendant will receive a life sentence.

13                  Are you with me?

14                                 THE POTENTIAL JUROR:    Yes.

15                  I think so.

16                  Q               (BY MR. TOWNSEND)   Okay.  We'll go over those  
17                  questions in a minute but the important thing to remember  
18                  is we have got to have jurors who are able to withhold  
19                  their decision on those questions until they have heard  
20                  all the evidence on the punishment, they are not to  
21                  decide it based strictly on the crime or on the guilt or  
22                  innocence part.

23                  Now, when you are making your decision  
24                  on Special Issue #2, Number One and Number Two, you can  
25                  -- certainly we are not wanting you to block that first

1 part of the trial off, you can certainly use that in  
2 helping you make your decision also but not just use  
3 that, also consider that punishment evidence, could you  
4 do that?

5 A Yes. I think I could.

6 Q Okay. If you will, ma'am, there is a sheet of  
7 paper up there that on the front on top it says "Special  
8 Issues." (Indicating)

9 A Okay.

10 Q If you will look at that and read just to  
11 yourself Special Issue #1 and then I will talk to you  
12 about that.

13 Okay. Ms. Morris, Special Issue #1  
14 refers to the future dangerousness of the Defendant.

15 Is that kind of what you got from it?

16 A Yes.

17 Q Okay. I want to talk to you about some of the  
18 terminology in there in that Special Issue #1.

19 First is that word on the second line  
20 of the word "probability."

21 Now, "probability" may be to a  
22 mathematician or some different type people may look at  
23 this different ways but "probability" means basically,  
24 you know, we are not -- the State is required to prove  
25 that Special Issue #1 beyond a reasonable doubt just like

1 we are "guilty", that the person is guilty in the first  
2 phase. But we are not required to prove beyond a  
3 reasonable doubt that we are certain or that we guarantee  
4 that the defendant would commit some other criminal act  
5 of violence in the future. We are only required to prove  
6 beyond a reasonable doubt that the defendant has the  
7 probability.

8 And the law in Texas defines probability  
9 as "more likely than not."

10 So basically we are required to prove  
11 beyond a reasonable doubt that it is more likely than not  
12 that the defendant will commit a criminal act of violence  
13 in the future.

14 Also that term "criminal act of violence  
15 there" at the end of the second line -- of course we are  
16 charging the defendant in this case with capital murder  
17 and certainly that is a criminal act of violence but  
18 there are many other criminal acts of violence that  
19 aren't capital murder, they are not as serious as capital  
20 murder such as assault, attempted murder, rape, many  
21 other type things that would be considered "acts of  
22 violence."

23 We are not required to prove that the  
24 defendant would be more likely than not to commit another  
25 capital murder, just that he would commit some criminal

1 act of violence in the future.

2 Do you feel like you understand Special  
3 Issue #1 and what you are being asked to decide there?

4 A Yes. I do.

5 Q Okay. In understanding that, you know, when  
6 you were making that decision on Special Issue #1 you can  
7 go back to that first part of the trial and sort of in  
8 your mind go back over that evidence in your mind and  
9 also that evidence that you hear at the punishment  
10 hearing before making your decision on that. You are  
11 not, you know, you are not required to forget all that  
12 evidence you heard at the first part and in deciding  
13 Special Issue #1 that is also, as I said, something that  
14 the State has to prove to you beyond a reasonable doubt.

15 If you will look at the sheet of paper  
16 there where it says "Special Issue #2, read that over to  
17 yourself and then I will talk to you about that.

18 Ms. Morris, Special Issue #2 is -- first  
19 of all that Special Issue is not like the guilt or  
20 innocence and it's not like Special Issue #1 in that we  
21 do not have to prove Special Issue #2 to you beyond a  
22 reasonable doubt, it's just sort of your opinion.

23 And basically what it says, you found  
24 the defendant guilty of capital murder, you decided, yes,  
25 that he's going to probably be a danger in the future and

1       then you are looking at Special Issue #2 and what it's  
2       basically saying is this is a death penalty type case,  
3       is this a death penalty type defendant or is there some  
4       sufficient mitigating circumstance to make me believe  
5       that this defendant should receive a life sentence rather  
6       than the death penalty.

7               If you answer "Yes", you do believe that  
8       then the defendant would receive a life sentence, if your  
9       answer is "No" I don't see any sufficient mitigating  
10      circumstance here to warrant a life sentence then the  
11      defendant would receive the death penalty.

12             But the thing about sufficient  
13      mitigating circumstances, one; they have to be no just  
14      anything that is mitigating or that would reduce the  
15      blameworthiness but it has to be sufficient in your mind  
16      to reduce that moral blameworthiness to the point that  
17      the defendant deserves a life sentence rather than the  
18      death penalty.

19             And you may, you know, different jurors  
20      look at that different ways. What might be sufficiently  
21      mitigating to you might not be to someone else even  
22      though they heard the same evidence you heard.

23             Let me give you an example; if I told  
24      you that someone had committed a murder and they had --  
25      that they were intoxicated at the time, one person might

1 think that this, the fact that they were intoxicated  
2 would be sufficiently mitigating because after all had  
3 they not been intoxicated they might not have committed  
4 the crime, whereas someone else might hear the same  
5 evidence and say, well, you know, that shouldn't make any  
6 difference, to me that doesn't excuse their behavior.

7 So you can see even though you have  
8 heard the same evidence you might feel differently about  
9 it.

10 Are you with me so far?

11 A Yes.

12 Q Okay. That's where that that Special Issue #2  
13 is the part of the punishment hearing where you have  
14 heard this evidence, you know, I was telling -- you might  
15 hear evidence from the psychological testimony or you  
16 might hear evidence of family history, retardation -- and  
17 bear in mind we are not talking particularly about this  
18 case but any capital murder case -- you might hear  
19 evidence of all sorts of things.

20 The important thing to remember is no  
21 matter what kind of evidence you hear that you have to  
22 be able to listen to that evidence and consider it in  
23 making your decision both on Special Issue #1 and Special  
24 Issue #2.

25 Now, that doesn't mean that you have to

1 believe everything you hear, it doesn't mean that you  
2 have to place any importance on everything you hear as  
3 long as you are willing to listen to and consider and  
4 then make your decision.

5 Could you do that?

6 A Yes.

7 Q Okay. Another thing about mitigating evidence  
8 is that mitigating evidence can come from anywhere. You  
9 might think, well, you know, the defendant would be who  
10 you might hear the most. Mitigating evidence would be  
11 evidence that they presented. But it might not  
12 necessarily be, you know, that mitigating evidence may  
13 come from us. The State may present you with mitigating  
14 evidence.

15 For instance, if during the guilt or  
16 innocence phase you decide that the defendant committed  
17 capital murder but you also heard evidence that indicated  
18 to you that the defendant was young and the defendant has  
19 some family problem, that the defendant was intoxicated  
20 or, you know, you might hear all sorts of stuff even  
21 though the State presented the evidence that still might  
22 in your mind be mitigating.

23 So I guess what I'm saying is you just  
24 kind of consider all that evidence and weigh it  
25 irregardless of which side of the table it comes from.

1                                    Could you do that?

2            A                    Yes.

3            Q                    I believe that you will be instructed at the  
4                                    end of the trial that in the written instructions that  
5                                    you receive from the Court that parole is something that  
6                                    you are not to consider in any way in deciding the proper  
7                                    punishment in the case.

8                                    And that's to say that if the -- when  
9                                    you were deciding whether to give the person a life  
10                                   sentence or the death penalty as far as the jury is  
11                                   concerned life is life and you are not to consider  
12                                   whether or not parole might ever be granted or if so when  
13                                   because after all that's not something that you can --  
14                                   would have any control over or could determine.

15                                   Could you make your decision as to the  
16                                   proper punishment in the case without, you know, I don't  
17                                   expect you to put parole completely out of your mind.  
18                                   We can't expect you to come in there with a blank mind  
19                                   but we do expect you to be able to set aside and not use  
20                                   it in any way in making your decision on whether the  
21                                   proper punishment should be a life sentence or death  
22                                   penalty.

23                                   Could you do that?

24            A                    Yes.

25            Q                    Okay.        And when I say "deciding proper

1 punishment" that means those Special Issues. So in  
2 deciding Special Issue #1, that future dangerous issue,  
3 could you not consider parole when deciding what your  
4 answer would be on Special Issue #1?

5 A Yes.

6 Q Same question on Special Issue #2, could you  
7 do that?

8 A Yes.

9 Q Ms. Morris, I want to talk to you a little bit  
10 about some general areas of the law that don't  
11 particularly necessarily have to do with just capital  
12 murder but just most criminal cases in general; if in  
13 this -- if in this case the State presented their  
14 evidence or in any capital murder case and you decided  
15 or the jury decided that, well, the State has proven  
16 their case as to murder but they haven't proved the  
17 robbery then the jury would be bound to find the  
18 defendant guilty of murder but not capital murder.

19 Are you with me on that?

20 A Yes.

21 Q Okay, well, then, you have a different range  
22 of punishment. Instead of having life or death you have  
23 got anywhere from five years probation to 99 years or  
24 life.

25 That is a real broad range of punishment

1 as the Judge discussed it with you when you all had your  
2 general jury selection a few weeks ago murder can be  
3 something anywhere from an extremely vicious type crime  
4 to -- all the way to what we generally describe as "mercy  
5 killing", are you familiar with that terminology?

6 A Yes, sir.

7 Q So a mercy killing even though it's a mercy  
8 type killing is the intentionally causing the death of  
9 another individual?

10 A Yes, sir.

11 Q Do you think you could consider the full range  
12 of punishment if a person was convicted of murder? Do  
13 you think that you could consider the 99 years to life  
14 and also consider the five years probation?

15 Do you think you could consider that  
16 full range?

17 A Yes, sir.

18 Q We are not asking you whether you would give  
19 this or give that but would you give it all  
20 consideration, could you do that? Give it all  
21 consideration before making your decision, could you do  
22 that?

23 A Yes, sir.

24 Q The State is required to prove our case beyond  
25 a reasonable doubt and that is not beyond all doubt but

1           it is beyond a reasonable doubt.

2                       And there is a legal definition for that  
3       the Court will provide for you.

4                       Is that beyond a reasonable doubt  
5       something that you are comfortable with and you don't  
6       think that -- do you think that is a real burden for the  
7       State?

8       A           Yes. I think it is.

9       Q           Okay. The burden of proof in any criminal case  
10      rests with the State of Texas, it's our burden to prove  
11      the defendant guilty in this case or any other case.  
12      It's not their burden to prove that he's not guilty.

13                      All right. We have got to prove our  
14      case to you beyond a reasonable doubt, on the other hand  
15      they don't have to prove anything. They can sit over  
16      there completely quiet during the whole trial and that  
17      never shifts, that burden, that burden is still right  
18      here with us.

19                      And we accept that burden.

20                      Is that okay with you?

21      A           Yes. It is.

22      Q           Okay. To go along with that burden of proof  
23      is the Constitutional Fifth Amendment privilege which  
24      means that the defendant in a criminal case does not have  
25      to testify unless he chooses to.

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Are you familiar with that?

A Yes.

Q And what that means is that you can't hold that against the Defendant in any way if he did not testify. You have got to decide the facts of the case based strictly on the evidence that you hear and not what you don't hear.

You know, I think it's human nature that you may be curious as to why the defendant didn't testify or what they would say if he did or anything of that nature.

But could you not use that in making your determination of guilt or innocence?

A Yes.

Q And, Ms. Morris, that goes along with the punishment phase of the trial as well, this Fifth Amendment privilege still applies there. We might like the defendant to get up there or you might or some other juror might like the defendant to get up there and say he is sorry.

That cannot be a determining factor in making your decision on Special Issue #1 and Special Issue #2 because if you hold that against the defendant because he doesn't get up there and say he's sorry basically what you are doing is you are denying him that

1 Fifth Amendment privilege.

2 Do you see what I'm saying?

3 A Yes, sir.

4 Q So could you make your decision as to Special  
5 Issue #1 and Special Issue #2 without holding it against  
6 the defendant in any way that he did not choose to  
7 testify?

8 A Yes. I could.

9 Q Okay.

10 THE COURT: Thirty minutes.

11 MR. TOWNSEND: Thank you, Your  
12 Honor.

13 Ms. Morris, in criminal trials you hear  
14 testimony from all sorts of witnesses, maybe  
15 psychologists, psychiatrists, ministers, police officers,  
16 teachers, family members.

17 It's possible that you might even have  
18 testimony from someone that you know. I don't think  
19 that's likely in this case but it's possible.

20 Where I am going with this is that in  
21 order to be a fair and impartial juror you have got to  
22 be able to place all those witnesses on the same starting  
23 block and not give anyone a head start just based on who  
24 they are or how they are dressed or what professional job  
25 they might have.

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Could you do that?

A Yes.

Q And base your finding on the evidence that they presented to you and determine their credibility after you heard their testimony and not just decide that, you know, when the guy sits on the stand when he's a police officer, you know, he's going to tell the truth or anything of that nature.

Could you do that?

A Yes. I could.

Q Ms. Morris, what you looked at a little earlier was the indictment in this case. I know the Judge went over this with you a few weeks ago.

That indictment is not evidence and I believe you understand that it cannot be used in any way.

To use it against the defendant in deciding whether he's guilty or not guilty, do you agree with that?

A Right.

Q We have got to present our evidence to you here in Court.

In criminal trials, Ms. Morris, oftentimes you have written statements by the defendant or you might call those "confessions" that the defendant has made.

1                   If you were a juror in a criminal case  
2                   and there was a written confession involved I believe the  
3                   Court would instruct you that that statement in order for  
4                   you to use that statement as evidence that you have to  
5                   find beyond a reasonable doubt that it was both voluntary  
6                   and truthful.

7                   My question to you is; if you heard the  
8                   testimony or heard a written -- read a written  
9                   confession, for instance, and you believed that the  
10                  statement was true but because the defendant was coerced,  
11                  because the defendant was not read his proper warnings,  
12                  rights, Miranda Rights -- are you familiar with the term  
13                  "Miranda Rights?"

14                A            Yes. I am.

15                Q            If for whatever reason that statement -- when  
16                I say "voluntary" I mean voluntary from the legal  
17                standpoint means that he has his Miranda Rights read to  
18                him that was appropriate for the situation, that he was  
19                not coerced in some, you know, unfair or illegal manner  
20                -- if you decide after reading that confession, after  
21                hearing all the testimony that this confession in your  
22                mind was truthful, that it was not -- but it was not  
23                voluntary it would be your duty as a juror to not -- like  
24                I said on something else earlier we can't expect you to  
25                put that out of your mind but you have got to be able to

1 set that aside. If you believe it to not be voluntary  
2 or if you believe the State did not prove to you that it  
3 was voluntary and not use it in any way when deciding the  
4 guilt or innocence of the defendant.

5 Could you do that?

6 A Yes. I could.

7 Q Could you also do that in regard to punishment  
8 hearing, you know, in answering those special questions  
9 -- what I mean is if there's something in that confession  
10 that would make you have ill will toward the defendant  
11 would you not use that against him since that confession  
12 has been adjudged by yourself to be not voluntary, could  
13 you do that?

14 A Yes. I could.

15 Q Okay. Ms. Morris, do you -- I have been asking  
16 all the questions.

17 Is there anything that you would like  
18 to ask me about or anything that maybe I haven't covered  
19 that you think is important as far as you being a juror?

20 A I can't think of anything right now.

21 Q Okay. I'm going to ask you about a few things  
22 off your questionnaire; you mentioned that you had a  
23 nephew in prison for aggravated robbery?

24 A Yes.

25 Q Was that a local situation here in Titus

1 County?

2 A No.

3 Q Where was that at?

4 A In Mesquite.

5 Q "In Mesquite?"

6 A Yes.

7 Q I don't know any nice way to ask this, I know  
8 he's your nephew and most of us love our relatives; is  
9 there anything about that situation that you felt ill  
10 will toward the police or the District Attorney's  
11 Office or --

12 A No. He committed a crime he shouldn't have,  
13 he's in prison for it.

14 As far as I'm concerned he's getting  
15 what he deserved.

16 Q You felt like he was handled appropriately?

17 A Yes.

18 In fact he pled guilty.

19 Q You mentioned that you had been on a criminal  
20 jury in a drug case?

21 A Yes, sir.

22 Q Was that here in Morris County?

23 A It was here in Titus County.

24 Q Excuse me, "Titus County", I'm sorry.

25 How did that case turn out? Was the

1 defendant found guilty?

2 A Yes. Guilty.

3 Q Anything about that jury service that bothered  
4 you or any questions that come to your mind that hamper  
5 your service in this jury?

6 A Not that I know of.

7 We had -- we were able to agree on a  
8 verdict and it turned out I think in an appropriate way.

9 Q Do you remember what that -- what drug was  
10 involved in that case?

11 A Cocaine I believe.

12 Q "Delivery of cocaine, sale of cocaine?"

13 A "A sale of cocaine." Yes.

14 Q What sort of sentence did the jury give?

15 A I think it was probated -- maybe less than 10  
16 years probation.

17 Q You mentioned in your questionnaire that you  
18 did not know Mr. Old, you mentioned that you knew him but  
19 then you said "Not personally?"

20 A Well, I just know of him because I live here  
21 in Titus County and I have not lived here a long time but  
22 I do know of him.

23 Q Anything about that relationship that would  
24 cause you a problem sitting on this jury?

25 A No.

1 Q Okay. Also representing the Defendant in this  
2 case is Lance Hinson.

3 Do you know Lance?

4 A I don't think so. He looks familiar but I  
5 don't know I know him.

6 Q Nothing about that --

7 A No.

8 Q Okay. You also mentioned that you knew  
9 something about the facts of this case.

10 Through what source do you know  
11 anything?

12 A The day before I came for the jury pool there  
13 was an article or maybe it was that, there was an article  
14 in the paper, in the Tribune, I think it was a day  
15 before. I read it and I think there was another one that  
16 same day.

17 Q Is that basically all you know?

18 A That's all I know.

19 Q You haven't talked to anyone about the case?

20 A Not anyone that knows anything about it I mean.

21 Q Okay. Was there anything of that, what you  
22 read in the newspaper that -- that would bother you  
23 sitting as a juror in this case?

24 When I say "that" what I mean is  
25 whatever you know about the facts of this case in order

1 to be a fair and impartial juror you have got to put that  
2 aside and recognize that that is not evidence and that  
3 you wouldn't use it in any way in making your decision.

4 Could you do that?

5 A Yes. I could.

6 MR. TOWNSEND: Pass the juror,  
7 Your Honor.

8 Thank you, ma'am.

9 THE COURT: Mr. Old.

10  
11 VOIR DIRE EXAMINATION

12 BY MR. OLD

13  
14 Q Ms. Morris, I notice on your questionnaire you  
15 have -- I think you lived in Kansas City for awhile and  
16 Dallas and some other places?

17 A Yes.

18 Q I associate -- your maiden name is "Carpenter?"

19 A That's correct.

20 Q Are you a Titus County Carpenter? Are you a  
21 native of this county?

22 A No. I am a native of Camp County which is in  
23 Pittsburg.

24 Q Were you raised in Camp County?

25 A Yes. I was.

1 Q Your husband or your married name is "Morris,  
2 Morris" is a name I associate with Titus County and there  
3 are several families of "Morris" in this county.

4 A He's not related to any of the family of  
5 "Morris."

6 Q Where was he born?

7 A He's also from Camp County.

8 Q "Camp County?"

9 A But his father -- he was adopted at a young age  
10 but his name was not changed. His name was still  
11 "Morris", his adopted parents that lived in Camp County  
12 were "McGraw."

13 Q You stated that at one time you were probably  
14 against the use of the death penalty as a punishment for  
15 crime.

16 How long ago has that been?

17 And I mean I'm not asking for your day  
18 and hour for the change, five years, 10 years ago?

19 A Probably at least 10 or 15 years ago.

20 Q I would presume you went through a period of  
21 time where you weighed the issue in your mind?

22 A Yes.

23 Q Was there any particular event that happened  
24 that changed your mind or changed your opinion?

25 A I think it's just again, a gradual thing over

1 the years.

2 I think we all start out in college a  
3 lot more liberal than we end up in later life.

4 Q Okay. Now, you understand that there are only  
5 certain types of cases which we call "capital murder  
6 cases" that are punishable by death in Texas?

7 A Yes.

8 Q And the part of the capital murder statute  
9 which is alleged in this case is intentionally taking the  
10 life during the course or -- and the attempting to commit  
11 the crime of robbery?

12 A Yes.

13 Q As to that particular crime, can you conceive  
14 of a set of circumstances as to whether or not you could  
15 answer the question as to the facts that we had a death  
16 sentence?

17 A I'm not sure I understood your question.

18 Q The law -- the law of the case as the law of  
19 capital murder is defined for this case that if a person  
20 -- if the indictment that you read -- a person  
21 intentionally kills another while committing or  
22 attempting to commit the crime of robbery that that is  
23 capital murder and punishable by life or death?

24 A Right.

25 Q Okay. Can you conceive of a set of

1 circumstances where a person intentionally kills someone  
2 in the commission of a robbery that you could answer the  
3 question to the effect that you had a death sentence?

4 A Yes.

5 Q Okay. Can you conceive of a set of  
6 circumstances where a crime -- where a crime was  
7 committed that fit capital punishment, intentionally  
8 taking a life during a robbery where you could give a  
9 life sentence or answer the question to a life sentence  
10 being imposed?

11 A I am sure if there was circumstances that if  
12 they met the law that I could.

13 Q Okay. What do you mean "circumstances?"

14 A I mean I suppose that once we get to the point  
15 that we decide that it's a capital murder then we have  
16 to listen to the evidence.

17 Is that what you are saying? That we  
18 have to listen to the evidence in the punishment phase?

19 Q Presume that you found a person guilty of  
20 capital murder and the law that makes the crime that you  
21 found him guilty of is that he intentionally took the  
22 life of another while attempting or committing a robbery?

23 A Okay.

24 Q Okay. Now, first let me back up a little bit;  
25 you do not write down "We give him life or we give him

1 death", you answer these Special Issue questions that  
2 have been -- that you have been asked about, you answer  
3 those questions, you are asked the question as to those  
4 questions and you were told the effect of those answers,  
5 you know if you answer question Number One "Yes" what  
6 happens and so forth, I mean you are not in the blind.

7 A Right.

8 Q Okay. Can you conceive of a set of  
9 circumstances that amount to capital murder -- and I'm  
10 speaking specifically about intentionally killing plus  
11 robbery -- to where you could answer those questions and  
12 the effect of those answers and give a life sentence?

13 A I'm not sure. I'm trying to think of what  
14 circumstances that you might be referring to.

15 Q I don't see -- you will find in front of you  
16 "State's 5", looks like this, I think you have looked at  
17 it before. (Indicating)

18 A Yes.

19 Q Except mine is all marked up and I don't think  
20 yours is. (Indicating)

21 A All right.

22 Q That first question asks as to the probability  
23 that the defendant would commit criminal acts of violence  
24 that will constitute a continuing threat to society and  
25 if you answered that issue "No" that results in a life

1 sentence.

2 A Right.

3 Q If you answered that issue "Yes" and then  
4 answer Special Issue #2 "Yes" -- answer Special Issue #2  
5 "No" that results in a death sentence, if you answer  
6 Number One and Number Two "Yes and yes" you end up with  
7 a life sentence.

8 A Okay.

9 Q I mean the written instructions of the Court  
10 tell you the effect of your answer.

11 Can you conceive of a set of  
12 circumstances to where you could answer those questions  
13 with answers that amounted to a life sentence?

14 A Through mitigating circumstances, is that what  
15 you are referring to?

16 Q Well, the first one -- okay, the first question  
17 is a question as to whether or not there is a  
18 probability --

19 A Okay.

20 Q -- of criminal acts of violence that will  
21 constitute a continuing threat to society, okay?

22 A Okay.

23 Q Now, if you had found someone guilty of capital  
24 murder would you automatically answer that question  
25 "Yes?"

1 A No. Not automatically. Based on the evidence.

2 Q I am -- you may -- the evidence in the case?

3 A Yes.

4 Q You found a man guilty and the evidence that  
5 you found him guilty of, would that evidence alone  
6 require you to answer that question "Yes?"

7 A In other words, are you asking me if the  
8 evidence that he gets at the --

9 Q Yes.

10 A -- would automatically require me to answer it  
11 "Yes?"

12 Q Yes.

13 A No.

14 Q I guess what I'm asking you is the fact that  
15 you found someone -- you found them guilty of capital  
16 murder, does that prove to you, you know, that there is  
17 a probability?

18 A No.

19 Q You would then consider the other evidence  
20 given you in the punishment phase of the trial?

21 A Right. Yes.

22 Q The courts of this state have said that the  
23 word "probability" in that issue means simply "more  
24 likely than not."

25 A Okay.

1 Q Which I relate to the term "a preponderance",  
2 more than just a little, more than -- would you require  
3 greater proof to you than simply "more likely than not"  
4 to answer that question "Yes?"

5 A No.

6 Q If it was proved to you that there was a  
7 probability, was 50/50 would you answer the question  
8 "Yes" or not?

9 A If it was 50/50?

10 Q "50/50?"

11 A Then I would answer the question "No."

12 Q Okay. Criminal acts of violence -- would you  
13 consider -- let's say the evidence clearly indicated to  
14 you that there was more than a 50 percent chance that in  
15 the future the person that you had convicted would steal  
16 a car, commit the unauthorized use of a motor vehicle,  
17 would you consider that to be a "criminal act of  
18 violence?"

19 A No. I don't think I would.

20 Q Okay. Would it require -- the meaning of the  
21 word "criminal acts of violence" indicate to you more  
22 than simply committing a criminal act?

23 A Yes.

24 Q Okay. If you believed that there was a  
25 probability that a person would commit the crime of theft

1 would that prove to you -- would you answer the question  
2 "Yes?"

3 A No.

4 Q It would take criminal acts as committed in  
5 violence as to a person?

6 A Yes.

7 Q Okay. Okay. The word "society", the courts  
8 of this state have said that "society" means both being  
9 confined -- you are still in society if you are confined  
10 in the penitentiary as opposed to being out of the  
11 penitentiary, could you define "society" that way?

12 A Could you repeat the question, please?

13 Q Okay. If according to the laws of the  
14 Appellate Courts of this state and the laws of this state  
15 the word "society" not only includes what we normally  
16 consider "society" and that's our everyday walking up and  
17 down the streets, you are still in society when you are  
18 in the penitentiary, you are not removed from society for  
19 the purposes of the definition of the word here.

20 I mean, would you consider the fact that  
21 the State would have to prove to you beyond a reasonable  
22 doubt that the probability of -- that the defendant would  
23 commit criminal acts of violence that would constitute  
24 a continuing threat to society if a man is in prison?

25 A Yes.

1 Q Okay. Now Mr. Townsend spoke to you about the  
2 parole law and he told you that you would be instructed  
3 by His Honor not to consider the Law of Parole.

4 I presume that you have some idea of  
5 what the Law of Parole is?

6 A I don't have a lot of knowledge of it. I know  
7 what the word means.

8 Q Now, you are in effect instructed that in  
9 defining the word "life" for the purpose of this trial,  
10 for a capital case, that life equals life, you are not  
11 to concern yourself with whether or not a party will ever  
12 be paroled, that you should not take that into  
13 consideration in arriving at your answers in reaching a  
14 verdict.

15 I mean you have got to presume that life  
16 means to lock him up until he's dead.

17 Can you do that?

18 A Yes. I can.

19 Q Now, what I think the Court will instruct you  
20 as to parole, words to this effect, "You are further  
21 instructed that in determining the punishment in this  
22 case you are not to discuss among yourselves how long the  
23 defendant will be required to serve any sentence imposed,  
24 such matters come within the exclusive jurisdiction of  
25 the Board of Pardons and Parole and are no concern of

1       yours."

2                       I think that you would if you are  
3 instructed that in a capital murder case that where a  
4 life sentence is imposed it means that a person will not  
5 become eligible for parole until he had served 35 years  
6 by calendar.

7                       That the fact that if somebody becomes  
8 eligible for parole it doesn't mean that they are going  
9 to get it, just the fact that they qualify for it, to be  
10 considered.

11                      Now, having been told all of that, as  
12 a juror can you lay it aside and assume for the purposes  
13 of your deliberation that life means life?

14       A               Yes.

15       Q               Okay. You told me that you served or you  
16 answered a few moments ago that you served on a jury, was  
17 that here in Titus County?

18       A               Yes.

19       Q               Did the defendant plead guilty or not guilty  
20 in that case?

21       A               Not guilty.

22       Q               "Not guilty?"

23       A               "Not guilty."

24       Q               You first found him guilty and then found --  
25 gave him a probated sentence?

1 A It was not a separate trial for the punishment  
2 phase of the trial, is that what you mean?

3 Q Yes.

4 That sounds to me like the person pled  
5 guilty.

6 A I don't think so.

7 Q You don't think so?

8 A No.

9 Q But you didn't -- let me ask, did the jury  
10 deliberate and find guilty or not guilty?

11 A Yes.

12 Q And then did you come back out?

13 A No. We did not come back out but we did have  
14 instructions that we were supposed to.

15 Q You were instructed to find the defendant  
16 guilty?

17 A No. We decided on the guilt or innocence but  
18 then with that we had information that we had to answer  
19 certain questions that decided on a recommendation for  
20 sentencing.

21 Q But did -- after you made the determination of  
22 guilt or innocence did the jury come back out from the  
23 jury room and hear more evidence of -- from the lawyers?

24 A No.

25 Q Are you still satisfied with your deliberation

1 in that case?

2 A Yes.

3 Q Back to Special Issue #2; there is a definition  
4 at the bottom of the page, "Mitigating evidence is  
5 evidence that a juror might regard as reducing the  
6 defendant's moral blameworthiness."

7 I'm not asking you how you would rule  
8 or to what extent you would, I'm asking you if you would  
9 consider and not reject these types of evidence; would  
10 you consider the age of the person?

11 MR. TOWNSEND: I'm going to  
12 object, Your Honor, I believe the way he's stating that  
13 he's stating would they consider it and not reject it,  
14 I think she is entitled to consider it and in fact reject  
15 it after considering it.

16 THE COURT: Sustained.

17 MR. OLD: Your Honor, I would  
18 object to his objection until I finished the question.

19 THE COURT: Then I will  
20 reserve my ruling and let you finish the question and  
21 carry the objection.

22 MR. OLD: My objection -- I'm  
23 not asking you how -- one of the factors or types of  
24 evidence I'm going to ask you about, I'm not asking you  
25 how you would determine mitigation, what I'm asking you

1 is would you summarily reject this type evidence and not  
2 even consider?

3 THE COURT: The objection is  
4 overruled.

5 MR. OLD: It doesn't mean that  
6 you will rule one way or the other, it's the fact that  
7 you will weigh the evidence.

8 Would you consider age as a mitigating  
9 circumstance and not automatically reject it?

10 THE POTENTIAL JUROR: Yes.

11 Q (BY MR. OLD) Okay. And I mean that could be  
12 a young age or an old age?

13 Okay. Would you consider someone's  
14 family history?

15 By "family history" I mean the  
16 environment and the circumstances of their raising?

17 A As "mitigating circumstances?"

18 Q Yes.

19 A Yes.

20 Q If you heard testimony from psychiatrists,  
21 psychologist's testimony, would you weigh it or consider  
22 it?

23 A Yes.

24 Q Mr. Townsend made a statement about -- in  
25 asking you about the right of a person not to give

1 testimony against themselves or give evidence against  
2 themselves, he said that on the punishment stage you  
3 might really want them to get up and say they were sorry.

4 Would you want them to do that?

5 A Sure. I think you would like to hear some  
6 people say that but on the other hand I realize that it's  
7 a Fifth Amendment right not to.

8 Q I mean, "Yes, you would like to hear from  
9 them?"

10 A Yes.

11 Q And I'm sure that would be true on the  
12 innocence or guilt stage of the trial, that you would  
13 like to hear it?

14 A Sure.

15 Q Now, is the fact that a person or the person  
16 charged with a crime does not testify, does that infer  
17 anything as to guilt to you?

18 A No.

19 Q You can detach and remove that circumstance  
20 from your deliberation of the evidence considering the  
21 evidence?

22 A Yes.

23 Q Now, as to -- at a point in the trial, you  
24 know, the defendant is called on to plead and that is to  
25 plead "guilty" or "not guilty."

1                   Presume that a man pled "not guilty"  
2                   -- and I'm not talking about this case, I'm talking about  
3                   any case -- and you later find beyond a reasonable doubt  
4                   that he's guilty.

5                   Is that evidence, is the fact that he  
6                   pled "not guilty" something that you would consider as  
7                   a circumstance against him as to punishment?

8           A           No.

9           Q           Okay. If he plead "guilty" would that be  
10           evidence that you would consider as mitigation or is that  
11           something that you would weigh as -- in considering  
12           mitigation?

13          A           If he pled guilty?

14          Q           Yes.

15          A           You would have to consider that.

16          Q           You would take that as a -- as a reason that  
17           you could -- could consider as mitigating?

18          A           I'm not sure I understand what you are saying.

19          Q           Back to the same question I asked you about  
20           age, I mean if someone --

21          A           The fact that they pled "guilty" could be  
22           considered a mitigating circumstance, is that what you  
23           are saying?

24          Q           "A mitigating fact?"

25          A           "A mitigating fact?"

1 I'm still not sure -- I don't know how  
2 to answer because I'm not sure I understand what you are  
3 saying.

4 Q You know the trial is like a person pled  
5 "guilty?"

6 A Right.

7 Q He does not testify or she does not testify,  
8 is that evidence or is that fact that they pled "guilty"  
9 fit and come into evidence, mitigating evidence?

10 Mitigating evidence is evidence that a  
11 juror might regard as diminishing the person's moral  
12 blameworthiness.

13 A Okay. I see what you are saying.

14 I'm not sure how I am supposed to  
15 answer, I don't know how to answer that. I'm sorry. I  
16 don't know how to answer that.

17 Q I'm not trying to commit you to what verdict  
18 that you would render if that was the case, I'm asking  
19 you, would you weigh it as evidence and not reject it?

20 A Oh, yes. Yes.

21 Q Okay. It would be a factor that whether you  
22 found life or death, a factor that you would take into  
23 consideration?

24 A Yes.

25 Q Was the trial that you participated in in the

1 last couple of years?

2 A Yes. I don't know exactly, I lose track of  
3 time, I can't tell you exactly when but I think it was.

4 Q Do you recall to the Court's instruction  
5 whether you had an instruction on reasonable doubt?

6 A I don't know the definition of it. I don't  
7 recall that.

8 MR. OLD: Let me -- the Judge  
9 is the exclusive judge of the law to be applied to this  
10 case, jurors do not determine law, jurors are in effect  
11 fact finders, the jury is the judge of the evidence and  
12 they must make their determination in the case based  
13 beyond a reasonable doubt.

14 There is a definition before you -- may  
15 I approach the witness, Your Honor?

16 THE COURT: You may.

17 Ma'am, it's right there. (Indicating)

18 MR. OLD: The definition of  
19 "reasonable doubt" starts in the second paragraph on the  
20 page and I will ask you to read there to the end of the  
21 page and familiarize yourself with it.

22 THE POTENTIAL JUROR: Okay.

23 Q (BY MR. OLD) You are, to serve as a juror you  
24 must take the law as it comes from the Court, when a word  
25 has a special legal meaning the Court will sometimes give

1 you a definition and what it is saying is for the  
2 purposes of your deliberation in this case "beyond a  
3 reasonable doubt" means this, can you take an instruction  
4 or definition of what a word means from the Court and use  
5 it and lay aside your own definition if it is in variance  
6 with the Court's instructions?

7 A Yes.

8 Q Okay. Does the "beyond a reasonable doubt" set  
9 a higher standard of proof than what we talked about  
10 "probability" in the first -- in the first Special Issue,  
11 "more likely than not?"

12 A A higher?

13 Q Yes. Would it require more to -- more evidence  
14 to prove to you beyond a reasonable doubt?

15 A Oh, yes.

16 Q Than simply "more likely than not?"

17 A Yes.

18 Q Now, going back to that first issue, would you  
19 agree with me that there is a double burden of proof?  
20 The State must prove to you beyond a reasonable doubt  
21 that it is more likely than not?

22 A Must prove beyond a reasonable doubt that the  
23 defendant is more likely than not to commit an act of  
24 violence?

25 Q Yes.

1 A Yes.

2 Q And if the evidence they produced, if you did  
3 not believe more likely than not beyond a reasonable  
4 doubt then you would answer that Special Issue "No?"

5 A Yes.

6 Q Now, a word or a legal theory that or law that  
7 the Court may instruct you on is the law that deals with  
8 confessions and statements of the accused.

9 Sometimes in the trial of a case you  
10 will have offered a confession or written statement of  
11 the party accused as evidence and that is whether or not  
12 a statement is voluntarily made is a factual matter for  
13 the jury. It must be proved to you beyond a reasonable  
14 doubt that the statement was voluntary before you can  
15 consider it.

16 Okay. The Court would instruct you what  
17 the definition or the criteria that must be proven beyond  
18 a reasonable doubt in order for you to find a statement  
19 to be voluntary.

20 You would be instructed something to  
21 effect that "Under our law a confession of a defendant  
22 made while the defendant was in jail or other places of  
23 confinement or in custody of an officer shall be  
24 admissible in evidence if it appears that the same was  
25 freely and voluntarily made without compulsion or

1 persuasion, provided, however, that it be made in writing  
2 and signed by the accused and shows that the accused had  
3 been warned prior to the making of such statement or  
4 confession by the person by whom the statement is made."

5 That's basically it and it sets out your  
6 Miranda Rights, your right to have a lawyer, you are  
7 informed that a statement may be used against you, that  
8 you have a right to remain silent and you have the right  
9 to terminate the interview anytime you want to.

10 Now, let's presume that in weighing the  
11 evidence the officer who took the statement and gets up  
12 there and says, "Gosh, you know, I didn't tell them they  
13 had the right to a lawyer, I didn't tell them that."

14 Will you find the confession to be  
15 involuntary?

16 A No.

17 Q You would not?

18 A Oh, "involuntary?"

19 Q Yes.

20 A I thought you said "voluntary."

21 Q No. "Involuntary?"

22 A Yes.

23 Q Now, let's say in your deliberation, no  
24 question about it, by definition it was an involuntary  
25 statement except that you believed that statement to be

1 true, the truth beyond a reasonable doubt and it in fact  
2 says "I committed the crime" or states, you know, facts  
3 that amount to that.

4 The Court will instruct you that you  
5 would not consider the statement or confession for any  
6 purpose whatsoever or any evidence obtained as a result  
7 of the statement if you find it to be involuntary.

8 Now, at the same time you believe it to  
9 be the truth beyond a reasonable doubt; can you follow  
10 the instructions of the Court and totally lay aside that  
11 statement and any evidence that was obtained from it?

12 A Yes.

13 Q Okay. Now, I mean would you consider that  
14 something to be difficult to do?

15 A No. Not for me.

16 Q Okay. Would the fact that you believed the  
17 statement to be true, would that be evidence to you that  
18 it was voluntary?

19 A The fact that it's true?

20 Q The fact that you believe it to be true beyond  
21 a reasonable doubt, would that effect your deliberation  
22 on the issue of voluntariness is my question?

23 A No.

24 Q There is a document before you that is entitled  
25 "Witness List", will you go over it and tell me any name

1 on that list you recognize?

2 And I want to know the extent that you  
3 know them.

4 And I would point out to you that there  
5 are some people with Camp County addresses that you may  
6 know as well, I'm not implying that you wouldn't know all  
7 of them, there are some Camp County people on there and  
8 I know you lived there 16 years.

9 A I don't think I know any of them.

10 Q There is no name on there that rings true to  
11 you either by knowing about it, just having heard of  
12 someone or knowing them?

13 A I cannot place any of these people but that  
14 doesn't mean that I don't --

15 Q You made the statement that you knew of me but  
16 did not know me personally?

17 A Yes.

18 Q I presume that you meant you knew me by  
19 reputation or notoriety?

20 A Yes. Well, yes.

21 Q Whether it be good or bad?

22 A My husband has I think used your law partner  
23 for a will or something and some other things.

24 Q Is there anything in your knowledge of me,  
25 whether by hearsay or otherwise that would effect your

1 deliberation in this case?

2 A No.

3 Q I mean even if in fact you didn't like me,  
4 couldn't stand me and thought I was the worst thing in  
5 the world, would you take that as an inference against  
6 Mr. Wardlow?

7 A No.

8 Q Thank you.

9 You said that you knew something about  
10 the facts or purported facts of this case?

11 A Yes.

12 Q After having read those facts did you form an  
13 opinion as to the outcome of this case?

14 A No.

15 THE COURT: It has been 38  
16 minutes, I forgot to tell you at 25.

17 MR. OLD: Thank you.

18 Anything in what you read that you could not  
19 totally lay aside?

20 THE POTENTIAL JUROR: No.

21 Q (BY MR. OLD) You understand that your duty as  
22 a juror is to take the evidence as it comes to you in  
23 this courtroom?

24 A Yes.

25 Q I mean you are not to rely on what you have

1       been told, heard, read outside of this courtroom?

2       A           Right.

3       Q           Okay. That would be the same, I mean I believe  
4       that jurors try to perform on their oath, I think jurors  
5       take things seriously.

6                   If during the trial of this case if  
7       someone approached you and said, "Oh, boy, I know all  
8       about that" and started talking to you about it, that  
9       wouldn't effect your deliberation in this matter, you  
10      could lay it aside?

11     A           Yes.

12     Q           You teach fifth grade?

13     A           Yes.

14     Q           Have you always taught fifth grade?

15     A           "Fourth or fifth."

16     Q           "Fourth or fifth?"

17                   Is that still what we call "elementary?"

18     A           Well, it's referred to --

19     Q           No. That's "elementary" --

20     A           -- it's refereed to "intermediate" here but,  
21     yes, it's "elementary."

22     Q           You teach or have you had occasion to teach  
23     Government?

24     A           Yes.

25     Q           Fifth grade?

1 A Not "Government" per se, "history."

2 Q "Citizenship?"

3 A "History, citizenship", yes.

4 Q I note on your questionnaire that you had, the  
5 last book you read was "A Time To Kill?"

6 A Yes.

7 Q I have no idea -- I have not read "A Time To  
8 Kill", is that anything about capital murder or have  
9 anything to do with this type --

10 A It's a murder case. Yes.

11 Q What?

12 A It is a murder case. Yes.

13 Q Is it a report of a trial or is it a report of  
14 circumstances giving rise to a crime?

15 A No. It's a report of the trial itself.

16 Q Anything in that book -- I am sure that  
17 somewhere in there they say, "The law is this" somewhere  
18 and anything in what you read in that book or any other  
19 that could influence you in this case?

20 A No.

21 Q You also referred to other books about murder,  
22 "In Cold Blood?"

23 A Yes.

24 Q That was a -- is that the one that came out of  
25 Houston?

1 A It was a Truman Capote book.

2 Q Okay.

3 A Based on a case in Kansas.

4 Q Nothing -- you would lay aside a novel and it  
5 wouldn't effect your deliberations?

6 A Yes. I could.

7 Q Anyone in your family connected with law  
8 enforcement other than I think you had a close friend who  
9 was some kind of federal agent?

10 A Yes. I have a close friend.

11 Q A "friend of a friend?"

12 A No. It's a very close friend of mine that  
13 lives in D.C. that is a DEA agent.

14 Q So far as considering the evidence in a trial  
15 of a case -- in the case that you were a juror on did a  
16 law enforcement officer testify in it?

17 A Yes.

18 Q Did you have any trouble weighing their  
19 testimony as against non-officer testimony for  
20 credibility?

21 Did they have a head start with you is  
22 what I'm asking?

23 A No.

24 Q Simply because they are peace officers or law  
25 enforcement officers?

1 A No.

2 Q If you were weighing the evidence in a two  
3 witness case, one a law enforcement officer, the other  
4 the mother of the accused party would the peace officer  
5 have a head start simply on who they were?

6 A No.

7 Q You commented that you would hate to be away  
8 from your job or your class for a long period of time?

9 A Yes. Definitely.

10 Q Okay. I don't -- Mount Pleasant Independent  
11 School District pays teachers while they are on jury  
12 duty?

13 A Yes. They do.

14 But that's not the problem, it's just  
15 being away from the class, that effects the class as a  
16 whole.

17 Q Do you think you would be preoccupied worrying  
18 or wondering what was going on in your classroom to the  
19 extent that it would effect your ability to listen to the  
20 evidence in this case and weigh it and reach a verdict?

21 A I would not allow it to, on the other hand, I  
22 would simply rather not be away from my class that long.

23 Q Let me -- I'm not only -- you can answer this  
24 question and I mean I am asking you to form an opinion  
25 of how or what is going to effect you; if you were in the

1 trial of this case for let's say a period greater than  
2 two and a half weeks and maybe up to three and a half or  
3 four weeks, do you think that your concern about your  
4 class, whether it was being carried on correctly would  
5 weigh on your mind to the point that it could interfere  
6 in your concentrating on hearing the evidence in this  
7 case, deliberating and making a decision?

8 A No. I don't think it would effect that.

9 Q You could put it aside?

10 A Yes. I could.

11 I would rather not have to but I could.

12 Q Okay. I have been referring to the indictment  
13 in this case, it is an indictment evidence or inference  
14 of anything to you?

15 A Just that there was enough evidence the Grand  
16 Jury thought that the defendant should be brought to  
17 trial.

18 Q So then you consider it to have been based upon  
19 evidence?

20 Is that an inference of guilt?

21 A No.

22 Q To you?

23 A No.

24 Q Would you consider it as such in the trial of  
25 this case or in your deliberation?

1 A No.

2 Q Do you understand that the State has to prove  
3 to you beyond a reasonable doubt that in order for -- to  
4 have a conviction for capital murder that a person  
5 intentionally took the life of another while in the  
6 course of committing robbery, do you understand that to  
7 be the --

8 A Yes.

9 Q -- the definition of "capital murder" in this  
10 case?

11 A Yes.

12 Q Our law has lesser included offenses, for  
13 example -- and it depends on what facts are proven and  
14 what is raised by law.

15 You may be charged in the event that the  
16 State doesn't prove to you beyond a reasonable doubt that  
17 this happened that you then may consider the lesser  
18 included offense of murder which is simply intentionally  
19 or knowingly killing another.

20 Let's say that you believe that the  
21 Defendant or a defendant intentionally killed someone but  
22 you don't believe it was in the course of a robbery;  
23 would you find him not guilty or capital murder?

24 A If he killed someone?

25 Q He intentionally --

1           A           And was not in the -- in a robbery, is that  
2           what you are asking me?

3           Q           Yes. I mean as this offense is alleged it's  
4           murder plus robbery.

5           A           Yes.

6           Q           And you find that he did it, the person  
7           charged, the Defendant in this case intentionally killed  
8           someone but you do not believe a reasonable doubt it was  
9           in the course of committing an offense of robbery, would  
10          you find him not guilty of capital murder?

11          A           He wouldn't be guilty of capital murder.

12          Q           Okay. I think I understood your answers but  
13          on those facts you would find him not guilty of capital  
14          murder?

15          A           Yes.

16          Q           Then if instructed to consider the lesser  
17          included offense of murder, which is just simply  
18          intentionally or knowingly killing someone, killing  
19          another, and the range of punishment for murder was five  
20          years probated to life, could you consider, could you  
21          conceive of a set of circumstances where you could give  
22          a five year probated sentence?

23                               MR. TOWNSEND: Your Honor, I  
24          object. I don't believe that she is required to conceive  
25          of a set of circumstances.

1 I think that the proper question is  
2 would she consider the full range of punishment depending  
3 on the facts and circumstances.

4 THE COURT: You are correct,  
5 Counsel.

6 I'm going to overrule the objection and  
7 I will instruct the witness, ma'am, you don't have to  
8 come up with any circumstances, if you can't you can tell  
9 us that you can't, you are not required to, in other  
10 words --

11 MR. OLD: Can you conceive of  
12 a set of circumstances that could result -- a set of  
13 circumstances how murder was committed that you could  
14 consider the lower end of the punishment, five years  
15 probated?

16 THE POTENTIAL JUROR: Now I  
17 really can't think of what the circumstances would be but  
18 I will be willing to consider the full range of  
19 punishment.

20 Q (BY MR. OLD) I don't know what you have heard  
21 about the case or what you read, that is not what I'm  
22 asking, it is not -- if you are basing it on maybe what  
23 you read about this case that is not my question.

24 A No. I am not. I just -- I don't understand  
25 what you mean by -- what circumstances would be involved?

1 Q Well, let's say -- I don't know, what do they  
2 call it on TV, this doctor up in the East that goes  
3 around helping people commit suicide, are you familiar  
4 with that?

5 A Yes.

6 Q If that is murder, and apparently it would be  
7 intentionally or knowingly taking the life of another and  
8 let's say that is your -- a set of circumstances along  
9 those lines, if you believe this -- could you consider  
10 the lower range of punishment?

11 MR. TOWNSEND: I object, Your  
12 Honor. Now he's giving her a specific set of  
13 circumstances, he's asking her what she would do.

14 THE COURT: Sustained.

15 MR. OLD: That is a suggestion  
16 to you of the type of crime or the means of a crime that  
17 might give rise to that but I mean I'm not asking you to  
18 consider that way but if I did -- I'm sorry but does that  
19 help you think of a set of circumstances?

20 THE POTENTIAL JUROR: Yes.

21 And I could consider that set of  
22 circumstances -- consider it.

23 THE COURT: Five minutes.

24 MR. OLD: You are telling me  
25 you now can conceive of a set of circumstances under

1       which someone could intentionally having taken a life,  
2       that you could consider the lower range of punishment?

3                       THE POTENTIAL JUROR:   Yes.

4       Q           (BY MR. OLD)   Now, I presume that you consider  
5       -- that you could conceive of a set of circumstances that  
6       would result in the higher range of punishment, that is  
7       a life sentence for the crime of murder or non-capital  
8       murder?

9       A           Yes.

10      Q           Let me -- as to the two Special Issues, the  
11      answer to Special Issue #2 is the probability of future  
12      acts of violence?

13      A           That's Number One, isn't it?

14      Q           Excuse me, Issue #1.

15                       Assuming that the evidence -- not in  
16      this case but any capital murder case resulted in your  
17      answering that question "No?"

18      A           Was there a question with that?

19                       I'm sorry.

20      Q           I asked you to assume that you had answered  
21      that question "No", at that time you, of course, had  
22      Issue #2 before you, would you require any mitigating  
23      evidence in order to answer Special Issue #1 "No?"

24      A           Are you saying that there is no evidence at all  
25      presented in the punishment phase, is that what you are

1 saying?

2 Q No. What I'm saying is after the punishment  
3 phase you have gone into the jury room and based on the  
4 evidence you do not believe there is a probability that  
5 the defendant will commit violent acts, criminal acts of  
6 violence in the future or be a threat to society, you  
7 have answered that question "No", let's say there is  
8 absolutely no evidence of any mitigation, now, as to  
9 answer Special Issue #1 would you require mitigating  
10 evidence to answer it "No?" A

11 A Yes.

12 Q Let me go back to Special Issue #1; you would  
13 require evidence of mitigation?

14 A No. Not for Special Issue #1. I thought we  
15 were talking --

16 Q No. Special Issue #1?

17 A We are going back to "Special Issue #1?"

18 Q Yes.

19 A I'm sorry.

20 Q Would you require evidence of mitigation to  
21 answer Special Issue #1 "No?"

22 A No.

23 THE COURT: Time.

24 MR. OLD: Okay. What you are  
25 telling me, you would only apply evidence on mitigation

1 to the answer to Special Issue #1?

2 THE POTENTIAL JUROR: That  
3 is my understanding of what the law is, my reasoning on  
4 that.

5 Q (BY MR. OLD) I'm not asking you what the law  
6 is.

7 A I am just using the --

8 Q Can you do that?

9 A Yes.

10 Q And even considering Number Two and saying and  
11 being of the opinion there's no mitigating evidence to  
12 reduce the defendant's moral blameworthiness can you  
13 still, if you find beyond a reasonable doubt that there  
14 is not a probability that the defendant will commit  
15 criminal acts of violence that would constitute a threat  
16 to society can you answer it "No" without any evidence  
17 of mitigation?

18 A Yes.

19 Q I mean there's not one single mitigating factor  
20 and evidence anywhere in your opinion and you can still  
21 answer Number One "Yes" if -- Number One "No" if that's  
22 what is proven to you or if the State does not prove to  
23 you beyond a reasonable doubt that the answer is "Yes?"

24 A Yes.

25 MR. OLD: That's all we have

1 from this juror, Your Honor.

2 THE COURT: Ma'am, if you will  
3 return to the waiting area I will send word to you  
4 shortly.

5 It will probably be the end of the week  
6 before we tell you whether or not you are on the jury.

7 THE BAILIFF: Watch your step  
8 there, ma'am.

9  
10 (The following occurred outside the  
11 presence and hearing of the potential juror:)

12  
13 THE COURT: Does the State  
14 have any challenges?

15 MR. TOWNSEND: Nothing, Your  
16 Honor.

17 THE COURT: Mr. Old?

18 MR. OLD: No, Your Honor.

19 THE COURT: All right. We  
20 will take a break but let her know that she is free to  
21 go and we will contact her the latter part of the week.

22 I do want to stay on the record for a  
23 moment.

24 Mr. Old, I have been giving you all the  
25 warnings around 25 or 30 minutes, Richard do you want

1       that warning or not?

2                               MR. TOWNSEND: Yes.

3                               THE COURT: All I am giving  
4       it to you for is so you can know about where you are in  
5       the presentation.

6                               MR. OLD: I would like to have  
7       it, if you forget --

8                               THE COURT: Well, if I forget,  
9       if I say "38" it's because I forget, I wanted to tell  
10      you it's because I forgot.

11                              Now, one more thing; the State made an  
12      objection that I overruled even though I think the  
13      objection was valid.

14                              In overruling the objection I did it so  
15      the Defense can maybe get a feel for the juror but I also  
16      think in overruling the objection and letting the  
17      question be asked that I'm letting the Defense get into  
18      an area that is causing more time to be taken than  
19      should. It's not your fault, it's the juror's fault.

20                              Jurors are not required to come up with  
21      any specific set of circumstances and if I allow either  
22      side to get into their set of circumstances or find out  
23      if they can consider a set of circumstances then we are  
24      really requiring the juror to use up part of the  
25      presentation time to redo something that the law says is

1       that warning or not?

2                               MR. TOWNSEND: Yes.

3                               THE COURT: All I am giving  
4       it to you for is so you can know about where you are in  
5       the presentation.

6                               MR. OLD: I would like to have  
7       it, if you forget --

8                               THE COURT: Well, if I forget,  
9       if I say "38" it's because I forget, I wanted to tell  
10      you it's because I forgot.

11                              Now, one more thing; the State made an  
12      objection that I overruled even though I think the  
13      objection was valid.

14                              In overruling the objection I did it so  
15      the Defense can maybe get a feel for the juror but I also  
16      think in overruling the objection and letting the  
17      question be asked that I'm letting the Defense get into  
18      an area that is causing more time to be taken than  
19      should. It's not your fault, it's the juror's fault.

20                              Jurors are not required to come up with  
21      any specific set of circumstances and if I allow either  
22      side to get into their set of circumstances or find out  
23      if they can consider a set of circumstances then we are  
24      really requiring the juror to use up part of the  
25      presentation time to redo something that the law says is

1 not proper.

2 So I'm gong to sustain the objection if  
3 it's made from either side from this point forward and  
4 I wanted to give both of you a warning.

5 Let's take a break.

6

7 (Recess.)

8

9 THE COURT: All right. Let's  
10 bring in Kenneth Reese.

11 THE BAILIFF: Have a seat  
12 right up there and be sure and watch your step.

13

14 KENNETH WAYNE REESE, Potential Juror #252,  
15 was called as a Potential Juror and, having been  
16 previously sworn by the Court, testified as follows:

17

18 THE COURT: How are you doing,  
19 sir?

20 THE POTENTIAL JUROR: Hi.

21 THE COURT: Go ahead and take  
22 your seat.

23 Sir, are you "Kenneth Reese?"

24 THE POTENTIAL JUROR: Yes.

25 I am.

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THE COURT: This is juror 14,

Mr. Reese.

I am Gary Stephens, I am presiding over this trial, we have got two lawyers from the District Attorney's Office, one is out of the District Attorney's Office in Morris County, that's Mr. Richard Townsend, and one is out of the District Attorney's Office in Cass County, that's Mr. Randall Lee.

THE POTENTIAL JUROR: Okay.

THE COURT: We have two Defense Attorneys, Mr. Bird Old, III.

MR. OLD: How are you doing?

THE COURT: Mr. Lance Hinson.

MR. HINSON: Good afternoon.

THE COURT: Next to Mr. Hinson the person charged, Mr. Billy Wardlow.

Now, Mr. Reese, the lawyers have read your questionnaire and are familiar with your answers.

THE POTENTIAL JUROR: Okay.

THE COURT: They are going to talk to you about some of those answers, also they are going to talk to you about the principles of law involved in a death penalty case.

You will be asked a lot of questions and the answers will let us know whether or not to put you

1 on the jury.

2 In order to be qualified you have to be  
3 able to understand, follow the law. You don't even have  
4 to agree with the law but if you can set aside your  
5 disagreement and follow the law you are qualified. But  
6 being qualified doesn't necessarily mean you are an  
7 appropriate juror so we want to know something about your  
8 thought processes, what you think so we can decide  
9 whether or not to put you on this case.

10 There's no right or wrong answers or  
11 right or wrong opinions but be honest and open with us  
12 and we will try to make this as short as possible.

13 Now, Mr. Reese, before I turn this over  
14 to the State on Page 2 you checked on the third question  
15 "Yes" to the question "Do you know of reasons why you  
16 could not sit as a juror in this case and be absolutely  
17 fair to both the Defendant and the State and render a  
18 verdict based solely on the evidence presented to you?"

19 Why could you not do so, sir?

20 THE POTENTIAL JUROR: Well,  
21 I know the fellow that was killed.

22 THE COURT: How well do you  
23 know him or did you know?

24 THE POTENTIAL JUROR: Well,  
25 I had met him once or twice and John Edwards is a good

1 friend of mine, this fellow was his uncle.

2 THE COURT: Okay.

3 THE POTENTIAL JUROR: And I  
4 have heard quite a bit, you know, of talk through the  
5 family. That's it.

6 THE COURT: Then there is no  
7 other reason because of the facts of the case?

8 THE POTENTIAL JUROR: Yes,  
9 sir.

10 THE COURT: It's not a moral  
11 or religious problem, it's not a problem with sitting on  
12 the death penalty, it's because you think you know too  
13 much?

14 I will let the lawyers share this with  
15 you.

16 Mr. Townsend.

17 MR. TOWNSEND: Mr. Lee will  
18 talk to him.

19 THE COURT: Excuse me. Mr.  
20 Lee.

21

22 VOIR DIRE EXAMINATION

23 BY MR. LEE

24

25 Q Mr. Reese, I want to explore that answer a

1 little bit early on so that we might could save some time  
2 if you know too much about the case, however, just the  
3 fact that you know -- know the individual or know a  
4 little bit about what might have happened or what someone  
5 else said happened.

6 The law requires that in order to serve  
7 on a jury that you be able to put aside any knowledge  
8 that you may have.

9 For instance, you knew the man, I think  
10 you said you met him a couple of times?

11 A Yes, sir.

12 Q Is there anything in that fact alone that you  
13 met him a couple of times that would make you unable to  
14 listen fairly to the evidence, nothing in this particular  
15 knowledge?

16 A No.

17 Q Have you ever been to his house?

18 A No, sir.

19 Q Do you even know where he lived?

20 A No.

21 Q So he wasn't a close friend?

22 A Right.

23 Q The information that you have received, was  
24 that from the family?

25 A Well, it was talked through the family. Yes,

1 sir.

2 Q What kind of information was that?

3 A Well, I was just told more or less what had  
4 happened.

5 Q Of course it's -- did -- the family wasn't  
6 present during the murder or did they say they were  
7 present during the murder?

8 A No.

9 Q So they were speculating I assume?

10 A Right.

11 Q Is that what was given to you, speculation as  
12 to what had happened?

13 A Basically what was in the newspaper.

14 Q So you don't know anything more than what was  
15 in the newspaper reports?

16 A Right.

17 Q And could you set aside that knowledge and base  
18 your opinion solely on what comes from the witness chair  
19 and comes from -- through this courtroom?

20 A Yes. I could.

21 Q And you could put aside any knowledge that you  
22 may have read in the newspaper and heard people talk and  
23 decide the case based solely on the evidence?

24 A Yes. I could.

25 Q No doubt in your mind that you could do that?

1 A That's right.

2 Q I believe you stated in your -- I will go ahead  
3 and go over your questionnaire first, get out of my order  
4 a little bit; I believe you stated that you know Mr. Bird  
5 Old, how do you know him?

6 A Went to school with him.

7 Q Anything about that relationship that would  
8 give him a one up on us?

9 A Probably not. No, sir.

10 Q Anything you do know about him you wouldn't  
11 hold against -- against his client, either?

12 A No, sir.

13 Q Lance Hinson is also an attorney, do you know  
14 Mr. Hinson?

15 He's from Mount Pleasant here.

16 A No. I don't believe so.

17 Q Okay.

18 A I know of him, I know his family but I don't  
19 know him.

20 Q So knowing him or knowing of him wouldn't  
21 interfere with your ability to decide fairly?

22 A No.

23 Q I will go a little bit with some of the other  
24 law, I don't see any problem but basically there's no  
25 right or wrong answer, both sides are wanting people that

1 can be fair, can listen to the evidence and decide  
2 fairly, not have some bias or prejudice and everyone has  
3 -- everyone has a certain type of case that they probably  
4 couldn't be fair and I have got several relatives and  
5 some of my relatives I'm going to believe whatever they  
6 say, no matter what the evidence and some of the others  
7 don't want me on the jury because I'm not going to  
8 believe a word that they say.

9 I think we are all that way with certain  
10 types of people and certain types of cases, that's part  
11 of what we are trying to find out is whether you can  
12 listen and decide fairly.

13 And another is the Judge mentioned if  
14 you can, even if you disagree with the law, if you can  
15 go ahead and put that aside and follow the law, if you  
16 can do what the Court instructs you and if you can do  
17 that then there shouldn't be any problem.

18 I will explain a little bit; this is a  
19 capital murder case, that "capital" basically means that  
20 the death penalty could be invoked and that we are asking  
21 for it in this case, we are asking for the death penalty.

22 Do you have any personal problem with  
23 the death penalty that you couldn't do that if in the  
24 right situation?

25 A No, sir. I don't.

1 Q You could do that if the facts called for it  
2 and the situation called for it?

3 A Yes, sir.

4 Q In Texas it, capital murder or murder,  
5 basically is intentionally and knowingly killing someone.

6 If I walked over and shot you, for  
7 instance, then obviously that's intentionally killing  
8 someone.

9 Capital murder is something more, it has  
10 to be a little more, a bit more than just killing  
11 someone, as if that weren't enough, it has to be murder  
12 plus something else, another felony of specific origin,  
13 like for instance, murder while you are committing a  
14 robbery, killing more than one person, killing a  
15 policeman, murdering a policeman or fireman in the line  
16 of their duty, things along those lines.

17 Do you see the difference there?

18 A Yes.

19 Q In this case the Defendant is charged with  
20 intentionally and knowingly causing the death of an  
21 individual while committing a robbery or attempting to  
22 commit a robbery and that -- and so that makes it capital  
23 murder and in Texas as in every place in the United  
24 States the burden of proof is on the State.

25 That means we have to prove the evidence

1           beyond a reasonable doubt.

2                           Do you have any problem with this  
3           burden?

4           A           No, sir.

5           Q           Do you think that's a fair burden?

6                           The Judge will give you a definition of  
7           reasonable doubt and it's about a page long and in fact  
8           I believe you have one up there if you would like to go  
9           ahead and read it.

10                          THE COURT:    To your left  
11           there, one more over. Right. (Indicating)

12                          THE POTENTIAL JUROR: Okay.

13                          MR. LEE:    Because lawyers  
14           wrote it that question is about twice as long as it  
15           should have been.

16                          But is that pretty close to your  
17           definition or does your personal definition differ?

18                          THE POTENTIAL JUROR: No.  
19           It's about right.

20           Q           (BY MR. LEE) So you could go ahead with that  
21           definition and apply it when the time comes in the trial?

22           A           Yes, sir.

23           Q           In Texas there are two-part trials, we have  
24           what is called a "bifurcated trial", basically the first  
25           part of the trial we introduce evidence or the evidence

1 is to guilt or innocence and that's all the evidence, not  
2 punishment, not anything else but basically guilt or  
3 innocence.

4 And we are required to prove beyond a  
5 reasonable doubt that the person is guilty of the offense  
6 which he is charged with.

7 And in the second part of the trial is  
8 basically "Okay, now that you have found him guilty of  
9 whatever what shall we do with him?"

10 The punishment in this case, it is  
11 whether he deserves life in the penitentiary or the death  
12 penalty.

13 The State still carries that burden of  
14 beyond a reasonable doubt.

15 Can you hold us to that burden and make  
16 sure we do our job in proving the case?

17 A Yes. I can.

18 Q Thank you.

19 You have a piece of paper up there that  
20 at the top of it it says "Special Issue", that's two  
21 different questions.

22 THE COURT: That one.  
23 (Indicating)

24 THE POTENTIAL JUROR: Okay.

25 MR. LEE: Special Issue #1,

1 would you read that and we will talk about it briefly.

2 THE POTENTIAL JUROR: Okay.

3 Q (BY MR. LEE) If you got to that question in  
4 the trial you would have already found him guilty of  
5 capital murder. And the law requires that in order to  
6 serve on jury that you be able to consider the evidence,  
7 all the evidence and not make up your mind ahead of time.

8 For instance, if you found an individual  
9 guilty of capital murder and just basically guilty of  
10 capital murder, you want to give him the death penalty  
11 and make up your mind at that time, that point, obviously  
12 you wouldn't be able to be eligible to serve on the trial  
13 because they have a second part of the trial with new  
14 evidence.

15 Would the fact that you convicted him  
16 alone of capital murder be enough, could you consider all  
17 the evidence, could you wait until the punishment phase  
18 to make up your mind as to -- to make up your mind as to  
19 what to do with an individual capital murder case or  
20 would you make up your mind based solely on the first  
21 part?

22 A I would base it on the evidence.

23 Q And could you wait and do it at the appropriate  
24 time in the order that the law requires?

25 A Yes. I could.

1 Q I am sure you can.

2 Special Issue #2 talks about several  
3 things but mainly it's the probability that a defendant  
4 -- I mean Number One -- yeah -- will commit violence in  
5 the future.

6 It's an -- it's our burden to prove  
7 beyond a reasonable doubt that it's probable that the  
8 defendant will commit future acts, not that he will  
9 commit another capital murder but -- or another murder  
10 but an act of violence.

11 That could be anything as low as  
12 punching someone in the nose on up to robbing or shooting  
13 or stabbing, various things.

14 Can you hold us to that burden and make  
15 sure we do it and if we do can you find the answer "Yes"  
16 to that Special Issue?

17 A Yes, sir.

18 Q If the Judge tells you that probability means  
19 more likely than not, not a certainty that he will do it  
20 but that it's more likely than not beyond a reasonable  
21 doubt that he will commit acts of violence can you hold  
22 us to that and make sure we follow it?

23 A Yes, sir.

24 Q On Special Issue #2, gets into a little more  
25 general area.

1 If you will, kind of read that.

2 A Okay.

3 Q That's obviously a more general Special Issue  
4 basically but it talks about mitigating circumstances.

5 Now, the law is that nobody can tell you  
6 as a juror what "mitigating" is, that is your own  
7 personal application. But basically you are required to  
8 listen to all the evidence and consider the evidence.

9 What is mitigating to one person might  
10 not be mitigating to someone else.

11 For instance, if a murder was committed  
12 while the defendant was intoxicated someone might feel  
13 like, one juror might feel that is mitigating, he  
14 wouldn't have committed that murder if he hadn't been  
15 drunk and another juror might say he had no business  
16 drinking and that it's not mitigating.

17 Each person can apply their own standard  
18 to some extent but they have to apply all the evidence.

19 Do you think you could do that?

20 A Yes. I could.

21 Q Many people feel like age might be a  
22 consideration, a 90 year old might not be held to the  
23 same standard that a 30 year old man or 17 year old man  
24 because of his youth might not be held to the same  
25 standard as the 30 year old man but that's up to you to

1 decide but can you consider all the evidence that is  
2 introduced and think about it, not that you do, not that  
3 you think it's mitigating but can you think about it and  
4 consider it?

5 A Yes, sir. I could.

6 Q I appreciate that.

7 Basically that is set aside, that is a  
8 catch-all sort of a safety valve, in other words, there's  
9 some reason, severely retarded, a person is severely  
10 retarded and might not be held to the same standard as  
11 a highly intelligent person, there's any number of  
12 things, that's what that Special Issue is for, just for  
13 a catch-all, just to make sure that some injustice might  
14 not be done based on a certain fact situation.

15 And I missed talking about something on  
16 Special Issue #1, that is having to do with violence and  
17 society; do you understand that "society" could also mean  
18 TDC so if a person is violent they might not necessarily  
19 want them to hurt the other state prisoners that are up  
20 there and could you consider that also?

21 A Yes, sir.

22 Q Nurses or doctors or State personnel?

23 A Yes, sir. I could.

24 Q I will give you a hypothetical situation; if  
25 you served on a jury and you found the defendant guilty

1 of capital murder and you could answer that "Yes" to  
2 Special Issue #1, yes, that he's going to be dangerous  
3 in the future in all probability but you feel like  
4 there's some mitigating circumstances, whatever they are  
5 -- the Judge will give you an instruction as to parole,  
6 says basically to the effect that a defendant found  
7 guilty and convicted and given a life sentence on a  
8 capital murder will be paroled but under the law it would  
9 be 35 years, he would be eligible.

10 MR. OLD: I object to his  
11 statement, it's a misstatement of law.

12 He said he "will be paroled", it's not  
13 the law.

14 THE COURT: Sustained.

15 MR. OLD: That's not the law.

16 MR. LEE: I'm trying to  
17 correct that.

18 Will be eligible for parole in 35 years,  
19 not "He will be paroled" but "eligible for parole in 35  
20 years", might never be paroled.

21 In a hypothetical situation you are  
22 required not to consider the parole, not to consider the  
23 possibility and not to try to adjust your sentence for  
24 that fact.

25 If you found a man guilty of capital

1 murder and you felt he's a danger and you -- but there  
2 might be mitigating circumstances, can you put aside the  
3 fact of the possibility of parole and make your decision  
4 based upon the evidence, not on the fact that a person  
5 may be paroled in the future?

6 THE POTENTIAL JUROR: AYes,  
7 sir. I could.

8 Q (BY MR. LEE) On Special Issue #2, talks about  
9 several things, "moral blameworthiness", obviously that's  
10 a flexible standard to some extent and I believe we  
11 covered that topic pretty well.

12 The law requires that you do these  
13 things, in other words, as the guilt/innocence, obviously  
14 you could consider during the punishment stage, you can  
15 consider everything you heard in the first part of the  
16 trial but you also have to wait to make up your mind  
17 until you heard the evidence in the second part and  
18 obviously if you -- if you feel like that the State  
19 doesn't prove that he's going to be a danger in the  
20 future could you -- but you feel like there was no  
21 mitigating circumstances, could you do it, in other  
22 words, could you answer Special Issue #1 if we don't  
23 prove it, can you say, "No, they didn't prove it on that"  
24 and not even consider the result of that answer if you  
25 feel like we don't do our job and didn't prove it to you?

1           A           You are going to have to run that by me one  
2 more time.

3           Q           It's a complicated fact, say we proved a fact,  
4 we proved that he's guilty but we don't prove to you that  
5 he's going to be a danger to society in the future, we  
6 don't -- we didn't prove to you that that was there  
7 beyond a reasonable doubt but you feel like there's no  
8 mitigating circumstances.

9                       The law requires that you go to Special  
10 Issue #1 and answer that and maybe you just -- you just  
11 don't like the way we did it but if we did not prove it  
12 to you can you hold us to the standard and to the law  
13 required and say, "No" on that?

14          A           Yes. I could.

15          Q           And automatically get life and you could hold  
16 us to that legal standard?

17          A           I could do it.

18          Q           There's several things to consider in  
19 punishment and in a case of that nature that's one reason  
20 we get to talk to you for so long because it's very  
21 complicated and a lot riding on it.

22                       The range of punishment is another area  
23 that is considered and kind of gets confusing sometimes,  
24 frankly.

25                       In a case of capital murder he's charged

1 with killing someone and committing a robbery, if the  
2 State does not prove that he was committing the robbery  
3 and can prove that he killed someone but didn't prove  
4 that he was committing a robbery at the time that took  
5 place then obviously the jury would have to find him  
6 guilty not of capital murder but of murder.

7 And the range of punishment is a little  
8 different, anywhere from five years probated to 99 years  
9 or life.

10 In a case of that nature could you  
11 consider the full range of punishment, not that you would  
12 to it, anyone -- nobody can tell, you can't tell anybody  
13 what you would do, you haven't heard the evidence but  
14 could you consider that is my question?

15 A Yes. I could.

16 Q And if a defendant is eligible for probation  
17 even on a murder case it could be as little as five years  
18 probation to 99 years or life, could you -- could you  
19 consider the full range of punishment?

20 A Yes, sir. I could.

21 Q And I appreciate it.

22 Murder covers a broad range, ordinary  
23 murder, it covers everywhere from the mercy killing to  
24 some very cold blooded type killing.

25 For instance along the mercy killing,

1 if there's an 80 year old couple, been married since they  
2 were 16 years old, wife gets cancer, is on life support,  
3 is dying, is going to die within a few weeks but she is  
4 suffering tremendously and begs her husband to "Help me  
5 out, do something, I can't stand it any longer" and he  
6 bends down and unplugs the machine or turns it off and  
7 she dies as a result of that.

8 Under Texas law that would be murder.

9 Anyway you can go to the extreme of 99  
10 years or life, some violent offenses of, you know, we all  
11 read about it in the newspaper type thing.

12 Could you consider as little as five  
13 years probation on some types of murder?

14 A Yes, sir.

15 Q Could you consider 99 years or life for some  
16 kinds of murder?

17 A "Four?"

18 Q "For some kinds of murder?"

19 A Yes. I could.

20 Q The law requires basically that witnesses be  
21 kind of given equal status, that you don't give one  
22 witness just because of their position or just because  
23 of -- for instance if a policeman, the law requires that  
24 you can't give a policeman, you can't just believe a  
25 policeman automatically just because he was a policeman,

1       that you have to base your decision on what you heard  
2       from the stand and determine whether he's lying or  
3       telling the truth based on how you would determine anyone  
4       else, listening to the evidence, listen to how he talks,  
5       what he says, how he handles himself, however your  
6       standard is for determining the truth.

7                   Can you hold a policeman, for instance,  
8       to the same standard you would hold to an ordinary  
9       citizen?

10      A           Yes, sir.

11      Q           And would that go for the other professions,  
12      a preacher?

13      A           Yes, sir.

14      Q           Or psychiatrist or dog catcher?

15      A           Yes, sir.

16      Q           Obviously we have all heard a lot about Fifth  
17      Amendment rights, that's the right to remain silent.

18                   As I mentioned, the burden of proof is  
19      on us to prove the case. They don't have to do anything,  
20      the Defense doesn't have to even ask a question, the  
21      Defendant does not have to testify and in many many cases  
22      for many many reasons will not testify.

23                   The fact that a defendant is accused of  
24      a horrible crime and says nothing, does not testify,  
25      would you hold that against him?

1 A No. I would not.

2 Q Basically the law requires, the burden is on  
3 us and you make a decision on the evidence, what you  
4 heard, not what you don't hear.

5 And you can hold us to that standard?

6 A Yes, sir.

7 Q And that goes for the punishment stage, too.

8 You know, a lot of people just want to  
9 hear, even if they are guilty, if they get up and say,  
10 "I'm sorry" or something that they want to hear that.

11 will you still not hold it against him  
12 if he doesn't testify in the punishment stage?

13 A No, sir. I won't hold it against him.

14 Q Would you hold it against the defendant if his  
15 attorney just doesn't produce any evidence at all, if  
16 they just sit, there's no evidence, just totally the  
17 State's case, would you hold the fact that his attorney  
18 may or may not produce anything against the defendant?

19 Can you base your decision on what  
20 evidence you did hear?

21 A Yes, sir.

22 Q We have an indictment in this case, basically  
23 the indictment is just a charge what an individual is  
24 charged with. The Grand Jury makes the indictment and  
25 charges an individual and the Judge will instruct you

1           that the indictment is not to be considered as evidence  
2           in any way.

3                           Can you follow those instructions and  
4           not consider the indictment?

5           A           Yes. I could.

6           Q           And base your decision on the evidence you hear  
7           here in the courtroom?

8           A           Yes, sir.

9           Q           In some cases confessions are introduced or not  
10          necessarily "confessions, statements" sometimes of  
11          various nature are introduced in a trial.

12                       The law requires that in order for a  
13          statement or a confession to be introduced that it be  
14          voluntary. That is obviously the State officers can't  
15          beat a confession out of somebody, they have got to go  
16          through certain procedures to get a statement.

17                       If they are taking a statement or  
18          confession they have to read them what is known as the  
19          "Miranda Warnings", I assume that you have heard of  
20          those, the right to remain silent?

21          A           Yes, sir. I have heard of it.

22          Q           Right to have an attorney and etcetera.

23                       And in certain circumstances the law  
24          requires that those rights be given to an individual.

25                       I will give you a hypothetical

1 situation; if we were in trial and a statement is offered  
2 and the -- say the defendant admits the offense, that he  
3 -- that he committed the murder but you listen to the  
4 evidence and you feel like that conviction was beaten out  
5 of him or you feel like that the officer when he made him  
6 write the statement didn't even -- didn't read him his  
7 rights and that he didn't know his rights and they had  
8 never been read to him but you believed that his  
9 confession is true, in fact in your own mind you know  
10 it's true; can you put aside the fact if you believe the  
11 confession is not voluntary can you put that aside and  
12 not consider it for any purpose?

13 A Yes, sir. I could.

14 Q I will change the facts a little bit, if it was  
15 -- if that was the only evidence the State offered but  
16 you feel like the State violated the law in getting the  
17 statement could you let a person you feel was guilty go  
18 free because the State screwed up because they beat a  
19 confession out of him or tricked a confession out of him,  
20 if there was no other evidence?

21 Obviously that's an outlandish fact  
22 situation but could you do that?

23 A I would like for you to repeat what you said.

24 Q Okay. Basically the way we make our --  
25 basically what we are doing, we are coming up with

1 outlandish theories just to make sure that you can follow  
2 the law and obviously on the 80 year old question that's  
3 not the case in here.

4 MR. OLD: I object to him  
5 saying -- he's talking about the facts of this case by  
6 inferring "That's not the case here."

7 THE COURT: Sustained.

8 You may rephrase.

9 MR. OLD: And the use of the  
10 word "outlandish", it's a very real fact situation  
11 and --

12 MR. LEE: I was referring to  
13 the 80 year old hypothetical that I gave earlier, it  
14 obviously doesn't apply to this case at all, the  
15 Defendant is not 80 years old and he was not married and  
16 it's not his wife.

17 THE COURT: With that  
18 explanation then I'm going to let you continue.

19 MR. LEE: Basically when we  
20 give you fact situations those are not evidence and you  
21 are not to consider any of these fact situations that we  
22 give as evidence. The evidence is what comes from the  
23 stand and what is produced.

24 With that explanation; if the law  
25 requires you that if a statement is taken voluntarily

1 that means it was not given properly, beaten out of him  
2 or some other situations and there is a hypothetical case  
3 where the State comes in and offers a confession and you  
4 believe the confession was illegally taken, that's the  
5 only evidence the State has so if this was illegally  
6 taken we have no evidence.

7 Can you find a defendant not guilty on  
8 that fact?

9 THE POTENTIAL JUROR: Yes,  
10 sir. I could.

11 Q (BY MR. LEE) Even if you believe it's true?

12 And you would hold the State to their  
13 burden and require us to live by the same law everybody  
14 else has to?

15 A Yes, sir.

16 Q In going over your statement, briefly, you can  
17 put aside the fact that you knew Mr. Cole's relatives?

18 A Yes, sir.

19 Q And you can base your decision on the evidence  
20 that comes through this stand and not base it upon what  
21 you heard on the street or you heard from anyone?

22 A Yes, sir.

23 THE COURT: It has been 28  
24 minutes.

25 MR. LEE: I will go over a

1 couple of parts to make sure I got it clear; can you keep  
2 an open mind and listen to the evidence and specifically  
3 on those Special Issues and can you listen to all the  
4 evidence and put whatever weight to that evidence that  
5 you think should be done and follow the Court's  
6 directions?

7 THE POTENTIAL JUROR: Yes,  
8 sir.

9 Q (BY MR. LEE) And if it comes down to it on  
10 like a Special Issue #1, if you feel like he is going to  
11 be a future danger to society, that he's going to commit  
12 acts of violence that he -- highly probable or probable  
13 and you believe that there is no mitigating  
14 circumstances, that is something that would make him less  
15 blameworthy, and you know the result of those answers,  
16 can you give those answers that would result in him  
17 getting the death penalty?

18 Obviously when you give those answers  
19 you will be able to figure out what is going to result  
20 from that.

21 A Yes, sir.

22 Q And can you follow the law and do it at the  
23 appropriate time and keep an open mind?

24 A Yes, sir.

25 MR. LEE: Basically until all

1 the evidence is in?

2 Pass the witness.

3 THE COURT: Mr. Hinson.

4

5 VOIR DIRE EXAMINATION

6 BY MR. HINSON

7

8 Q Thank you, Your Honor.

9 Mr. Reese, as the Judge introduced  
10 myself and Mr. Old I am Lance Hinson, I'm just going to  
11 ask you some questions here this afternoon, one question  
12 I had; are you aware of anyone that has been represented  
13 by either myself or Mr. Old recently involving any family  
14 member of may have been represented by anyone in our  
15 offices?

16 A No.

17 Q Is there anything in the -- you have been in  
18 Titus County several years?

19 A Forty-eight years.

20 Q All your life?

21 A Yes.

22 Q Your father is "Jack Reese?"

23 A Yes, sir.

24 Q Worked for the County a long time?

25 A Yes, sir.

1 Q Is there any, I guess "predisposition" on your  
2 behalf, on your behalf as you -- say you were a juror in  
3 this case and as you listen to the evidence based on your  
4 living in this county for that long would you tend to  
5 hold anything against myself or Mr. Old as an attorney  
6 in the county?

7 A No. I would not.

8 Q Would you tend to find us more credible because  
9 of being in the county?

10 A "More credible?"

11 No.

12 Q Start off even with the State?

13 A Yes. I would.

14 Q There is a document up there called a "Witness  
15 List." (Indicating)

16 A Okay.

17 Q It's three pages, can you find that?

18 Do you have those three pages?

19 A Yes. I do.

20 Q Would you look, would you read those names and  
21 if you come across one that you know or you have heard  
22 about would you let me know?

23 A By "someone I know", do you mean someone I know  
24 like a friend or just an acquaintance?

25 Q If you have heard of their name.

1 A Just "heard of the name?"

2 The only one that I have met or know is  
3 Dewayne McClung and I only met him one time.

4 Q Where did you meet him at?

5 A I was squirrel hunting with him one time and  
6 I met him.

7 Q How long ago was that?

8 A It has been 20 years probably.

9 I wouldn't know the man if I seen him.

10 Q All right. Thanks.

11 Now, you mentioned a "John Edwards?"

12 A Yes.

13 Q Are you related to John Edwards?

14 A No. I am not.

15 Q How do you characterize your relationship with  
16 John Edwards, friends, acquaintances?

17 A "Best friends."

18 Q "Best friends?"

19 I believe there is a "John Edwards" that  
20 is a plumber in town?

21 A That's him.

22 Q "That's him?"

23 All right. And you mentioned that Mr.  
24 Edwards was related to Mr. Cole?

25 A It's John's uncle.

1 Q How often do you see John Edwards?

2 A Twice a week.

3 Q When the event occurred in June of '93 how long  
4 after that, Mr. Cole's death, did you discuss any facts  
5 regarding the case with John Edwards?

6 A I never discussed it with him.

7 Q Did Mr. Edwards ever bring up the subject to  
8 you?

9 A He was just telling me, you know, what had  
10 happened, you know.

11 Q And you are telling me that that was a time  
12 when you didn't have any personal knowledge of the case?

13 A That's true.

14 Q And since that time you have acquired some  
15 personal knowledge based on what was in the newspaper?

16 A The only thing I know is what was in the  
17 newspaper and what John -- what he said.

18 Basically everything he heard was what  
19 was in the newspaper I think.

20 Q What newspaper -- does John live in Mount  
21 Pleasant?

22 A Yeah. Titus County.

23 Q Do you know if he gets the Daingerfield paper?

24 A I have no idea.

25 Q Regarding whatever John had learned what did

1 he first tell you about the case?

2 A Well, he just told me his uncle was killed.

3 Basically it was just what was in the  
4 newspaper, you know, I just vaguely remember him, you  
5 know, just bringing it up.

6 Q Do you recall any specific facts that he may  
7 have told you about the incident?

8 A No.

9 Q I don't get the newspaper and -- from Titus  
10 County -- the Tribune -- if you want to call it that so  
11 I don't know what was in the paper, can you tell me what  
12 he would have told you based on what was in the  
13 newspaper?

14 A He just told me that his uncle was -- was  
15 killed and put in a closet and his truck was stole,  
16 that's the only thing I know.

17 Q In relation to time when did he tell you that?  
18 When -- we are talking about Mr. Edwards, was it shortly  
19 after the incident or a couple of months or six months?

20 A Probably a month after that.

21 Q Did he ever say who committed that crime?

22 A No, sir.

23 Q Did he ever discuss with you whether anyone had  
24 been caught or arrested for that crime?

25 A No, sir.

1 Q Prior to your being -- being called for the  
2 jury in this case were you aware of who had been arrested  
3 and charged with that incident?

4 A Rephrase that.

5 Q Since or prior to the time that you were called  
6 as a juror in this case and you learned some facts from  
7 the first day, I believe it was October 6th when you were  
8 first called for jury service, prior to that time had you  
9 learned anything about who had been arrested or charged  
10 with that crime?

11 A I knew anything other than what was in the  
12 paper -- that's the only thing that I know.

13 Q Based on what Mr. Edwards had told you and then  
14 later you read some things in the newspaper, have you  
15 ever repeated those facts to anyone as being the truth  
16 as you know them?

17 A I don't know that any of it's true.

18 Q Mr. Edwards ever express what type of  
19 punishment that he would suggest as a result of someone  
20 killing Mr. Cole?

21 A We have never discussed that.

22 Q Based on your conversations with Mr. Edwards  
23 and what you have read in the papers did you form an  
24 opinion as to guilt or innocence right now as to the  
25 guilt of Mr. Wardlow in this case?

1           A           No, sir. I couldn't. From what I heard I  
2           couldn't.

3           Q           Based on what you had heard from Mr. Edwards,  
4           and I assume there there was some newspaper articles, you  
5           stated that he had learned from newspaper articles, I  
6           assume that --

7           A           No. I was the one that said "newspaper  
8           articles", what I have read in the newspaper.

9           Q           Do you think Mr. Edwards learned the  
10          information from sources other than newspaper articles?

11          A           I have no idea. I don't know.

12          Q           At the time he informed you of these facts you  
13          had not read any newspaper articles, is that what you are  
14          telling me?

15          A           I think probably I had read the paper before  
16          I talked to him about it but I'm not sure. I'm not sure  
17          on that. I don't know.

18          Q           Based on what he had told you had you formed  
19          an opinion as to whether or not Mr. Cole had been  
20          murdered?

21          A           I hadn't formed an opinion on anything.

22          Q           You stated you didn't have an opinion to the  
23          guilt of Mr. Wardlow and based on what you all have heard  
24          as part of being part of this jury selection process have  
25          you formed any opinion as to the guilt or innocence?

1 A No, sir. I haven't.

2 Q Of Mr. Wardlow as of through today?

3 A No, sir. I have not.

4 Q If you are picked as a juror in this cause and  
5 as a result of your deliberation with the other jurors  
6 that you render a verdict that you thought John Edwards  
7 would not be satisfied with would that have any effect  
8 on your deliberations as a juror?

9 A No. It would not.

10 Q If the Defendant was found not guilty would you  
11 have any problem talking to John Edwards the next day you  
12 met him out on the street and buy him a cup of coffee?

13 A No. I would not.

14 Q Any problem with that?

15 Are you willing to listen, if you were  
16 chosen as a juror are you willing to listen to the  
17 evidence that will be presented to you in the courtroom  
18 and not consider anything that you have heard or read and  
19 base your decision on the information that you have  
20 presented to you here?

21 A Yes. I could.

22 Q You could disregard whatever Mr. Edwards may  
23 have told you about the case?

24 A That's true.

25 Q Disregard what you have read in the newspaper?

1 A Yes, sir. I could.

2 Q You stated that you had met Mr. Cole, what  
3 context did you meet Mr. Cole?

4 A I believe it was one time John and I were going  
5 squirrel hunting down at Cason, south of Cason down  
6 there, we had a deer lease down there and I met him one  
7 time down there.

8 Q Was this Mr. Cole's house? I believe you --

9 A No.

10 Q Did you know where Mr. Cole resided?

11 A No. I did not.

12 Q Did you go squirrel hunting on any of Mr.  
13 Cole's land?

14 A No. I did not.

15 Q Is there anything as the result of meeting Mr.  
16 Cole, is there anything in there that would cause you to  
17 weigh as you deliberate, weigh more heavily or to lean  
18 toward the State's side of the case?

19 A No. It would not.

20 Q What was your opinion of Mr. Cole?

21 A Well, from what I saw of the man he was just  
22 an average man, a nice fellow.

23 That was a long time ago.

24 Q All right.

25 A I wouldn't know the man if I would see him

1 today.

2 Q How many years ago would that have been?

3 A Probably 20 or 25 years ago.

4 MR. HINSON: Oh, okay.

5 You answered on your questionnaire and  
6 the Judge asked you about this about do you know of any  
7 reason why you could not sit as a juror in this case and  
8 be absolutely fair to both Defendant and the State and  
9 render a verdict based solely on the evidence presented  
10 to you.

11 And at the time that you filled out your  
12 questionnaire -- Your Honor, does the --

13 THE COURT: I have the  
14 original.

15 MR. HINSON: -- does the juror  
16 have it?

17 THE COURT: No. I have it  
18 right here.

19 Here you go, Mr. Reese.

20  
21 (Handed to the potential juror.)

22  
23 MR. HINSON: On the second  
24 page of that questionnaire, it's the third question, and  
25 you answered that question "Yes."

1                    Could you explain a little bit about  
2                    what you were thinking at that time when you stated that  
3                    you could not be absolutely fair to the Defendant and to  
4                    the State?

5                    THE POTENTIAL JUROR: I just  
6                    answered it wrong.

7                    Q                    (BY MR. HINSON) Did you misread it?

8                    A                    I misread it. It should have been "No."

9                    Q                    So what you are telling us if you are selected  
10                    as a juror you would come in here starting with a clean  
11                    slate?

12                    A                    Yes. I could.

13                    Q                    Be absolutely fair to both the State and to the  
14                    Defendant?

15                    A                    That's right.

16                    Q                    On Page 10 of your questionnaire you stated  
17                    that someone had been a juror in a case, in a civil case.

18                    Had either you or your wife ever served  
19                    on a Grand Jury?

20                    A                    No, sir.

21                    Q                    And the civil case, did that case go to trial?

22                    A                    Yes, sir.

23                    Q                    Was that you or your wife that sat on that  
24                    jury?

25                    A                    Me.

1 Q Here in Titus County?

2 A Yes, sir. It was.

3 Q How many years ago was that?

4 A Oh, gosh, I don't know. It's -- let's see --

5 Q Five, 10, 15?

6 A It's been longer than that, probably 25.

7 Q On Page 11 there at the top, "What is your  
8 personal opinion about the criminal justice system?"

9 And I know personally I could write more  
10 than four lines, you wrote four words.

11 Is there anything beyond that, I know  
12 you were limited in time to what you could write, is  
13 there anything that causes you concern about our criminal  
14 justice system?

15 A No, sir.

16 Q You are happy with the prison system in the  
17 State of Texas?

18 A "The prison system?"

19 Q Yes.

20 A I think it could be better.

21 Q And I know you don't work for the prison system  
22 but your opinion as to how it could be better?

23 A You want my opinion as to how it could be  
24 better?

25 Q Yes, sir.

1           A           Quit letting so many of the criminals back out  
2           on the streets.

3           Q           Is there any other problem that you can think  
4           of, you know, not being inside the prison system itself  
5           but any other problem?

6                       I think what you are talking about is  
7           parole?

8           A           Right. I don't have a problem with that. I  
9           have a problem with repeat people that have been down  
10          there three or four times and they still get out and go  
11          back, you know, three or four trips down there.

12          Q           Are you saying you won't hold any prejudice  
13          -- and I'm putting words in your mouth -- do you hold any  
14          prejudice against anyone that has been tried and  
15          convicted and goes down?

16          A           I don't have a problem with it. No. I don't  
17          have a problem with it. I just think it's not right but  
18          that's our -- that's the way the system works.

19          Q           Do you have a strong moral conviction or not  
20          of whether or not a person deserves one chance?

21                       And what I'm relating that to is what  
22          you said about parole, about repeat offenders.

23                       Now, I'm not saying one chance on  
24          probation, I'm saying one chance going down to the  
25          penitentiary and coming back?

1           A           My belief, a man ought to live right, and he  
2           won't have to go to jail.

3                       Is that the kind of answer you want?

4           Q           Well, there's no right or wrong answer, we are  
5           just wanting answers.

6           A           Okay.

7           Q           I will just listen to what your answers are.

8                       Mr. Reese, I'm going to read to you what  
9           I believe the Judge will instruct you regarding the  
10          parole law in this case, assuming that you were a juror  
11          and that the Defendant was found guilty of capital murder  
12          and I believe the instruction will go something along  
13          these lines that "As a juror you are further instructed  
14          that in determining the punishment in this case you are  
15          not to discuss among yourself how long the Defendant will  
16          be required to serve any sentence imposed. Such matters  
17          come within the exclusive jurisdiction of the Board of  
18          Pardons and Paroles and are of no concern of yours.

19                      And based on the time of this offense  
20          in June of '93 the instruction I presume that you would  
21          be given is that if the Defendant was found guilty of  
22          capital murder there are two sentences that as a juror  
23          you could consider, number one would be life in prison  
24          and number two would be the death penalty.

25                      And life in prison is a maximum of 35

1 calendar -- not a "maximum", excuse me, is "35 calendar  
2 years" before that Defendant could be considered eligible  
3 for parole.

4 Do you follow me?

5 A I follow you.

6 Q So the parole, this Defendant is convicted of  
7 a capital crime, in 35 years could be eligible,  
8 considered eligible for parole. Not that he's going to  
9 get it or not that any capital defendant would get out  
10 in 35 years, just it comes up for parole at that time.

11 Now, based on that information of what  
12 I believe the instruction would be how would that effect  
13 your deliberation as a juror in this case?

14 A I wouldn't. If the Judge gives the parole I  
15 don't have no problem with that, I don't have to agree  
16 with it but I don't have a problem with it.

17 THE COURT: Let me stop you  
18 right there; we don't have any control over parole  
19 either, that's something that comes out of the Parole  
20 Board. The Judge does have to do with probation before  
21 a person goes to prison, parole is what happens if they  
22 are out before they serve their sentence.

23 I just want to get me off the hook.

24 THE POTENTIAL JUROR: I  
25 understand.

1 MR. HINSON: Knowing that  
2 information -- before I confuse us both, would you find  
3 the capital murder trial flow chart?

4 THE COURT: Twenty-five  
5 minutes.

6 MR. HINSON: Thank you, Your  
7 Honor.

8 And you see there at the top it starts  
9 "Phase I, Guilt and Innocence" and we are starting Phase  
10 I after jury selection so we have gone through jury  
11 selection, picked the jury, we have gone to Phase I;  
12 guilt or innocence evidence is presented to the jury, at  
13 that time the Defendant to be found either guilty or not  
14 guilty and if the Defendant was found guilty it would go  
15 to Phase II, the punishment phase.

16 And at that time evidence is presented  
17 on which you will consider answering the Special Issues.

18 And I believe you have a copy of those  
19 up there, too, Special Issue #1 and Special Issue #2?  
20 (Indicating)

21 THE POTENTIAL JUROR: Yes.

22 Q (BY MR. HINSON) Now, as you went into Phase  
23 II let's assume that the Defendant, any defendant was  
24 found guilty of capital murder, Phase I, you have gone  
25 to Phase II, there's evidence presented, let's just

1       assume that maybe he was a repeat offender, he or she,  
2       any capital defendant and knowing what you know that a  
3       life sentence is a minimum of 35 calendar years at which  
4       time that defendant is eligible for parole, not that he's  
5       going to get out on parole but he becomes eligible in 35  
6       years and as you consider Special Issue #1 is your belief  
7       or your conviction regarding repeat offenders, is that  
8       going to effect your deliberation regarding Special Issue  
9       #1?

10                   And I guess I would ask you to read  
11       Special Issue #1.

12       A           Your question was what?

13       Q           Special Issue -- do you have that sheet,  
14       Special Issue #1?

15       A           I have got it. (Indicating)

16       Q           And I'm trying to throw a lot at you, I know,  
17       and we have the flow chart which says if you answer  
18       Special Issue #1 "No" but that there is a life sentence  
19       imposed.

20       A           Okay.

21       Q           And knowing the life sentence is, 35 calendar  
22       years there then they are eligible for parole, knowing  
23       that is that going to cause you to lean toward answering  
24       Special Issue #2 -- or Issue #1 "Yes?"

25       A           No. It would not.

1 Q You would be able to look at the evidence as  
2 a juror disregarding everything you have read and seen  
3 and heard, go to the punishment phase and answer the  
4 Special Issue number disregarding your own beliefs  
5 regarding repeat offenders?

6 A Yes, sir.

7 Q You would also be able to disregard the parole  
8 law knowing that the defendant would be eligible for  
9 parole in 35 years, you would be -- still be able to look  
10 at that case based on the evidence you saw and consider  
11 whether or not it should be a life sentence or a death  
12 sentence?

13 A Yes, sir.

14 Q Now, about two Special Issues, Number One or  
15 now back to Special Issue #1; the State is required to  
16 prove to you beyond a reasonable doubt that there is a  
17 probability that the defendant would commit criminal acts  
18 of violence that would constitute a continuing threat to  
19 society.

20 "Probability" has several meanings to  
21 several people, the State law has defined "probability"  
22 as "more likely than not", can you accept that definition  
23 of "probability?"

24 A Yes, sir. I could.

25 Q And I guess just to back up; what is your

1 personal definition of "probability", the weather man  
2 says, "It's probably going to rain tomorrow?"

3 A It's probably going to happen.

4 Q Is "probability more likely than not" to you?

5 A Yes. It is.

6 THE COURT: When you finish  
7 this area I need to talk to Counsel for just a minute  
8 about scheduling.

9 MR. HINSON: Thank you.

10 MR. OLD: Do you want us to  
11 approach the bench, Your Honor?

12 THE COURT: Just right over  
13 here if you would, sir.

14 Excuse me for a moment, I'm not sure we  
15 are going to talk to our next guy and I need to talk to  
16 the lawyers.

17  
18 (Off the record discussion at the bench  
19 out of the hearing of the potential juror and Court  
20 Reporter.)

21  
22 THE COURT: Excuse us, Mr.  
23 Reese, we sometimes get out of order and have to  
24 sometimes see where we are.

25 I don't think we need to keep everybody

1 here until 6:00 so I'm letting someone go.

2 All right. Mr. Hinson, you may proceed.

3 MR. HINSON: Thank you, Your  
4 Honor.

5 Mr. Reese, I think we had cleared up  
6 "probability" as "more likely than not" and you were able  
7 to agree with that?

8 THE POTENTIAL JUROR: That's  
9 right.

10 Q (BY MR. HINSON) And the probability would have  
11 to be proven to you beyond a reasonable doubt or beyond  
12 a reasonable doubt is the standard proof for the State,  
13 could you hold the State to that standard on Special  
14 Issue #1?

15 A Yes, sir.

16 Q Taking these in conjunction, the flow chart and  
17 Special Issue again or getting to Special Issue #2, you  
18 note at the bottom of the flow chart answer to Special  
19 Issue #2 "Yes", a life sentence is imposed, answer that  
20 question "No", a death sentence would be imposed.

21 Based on what you know, what Mr. Edwards  
22 has told you, what you have seen in the paper, your own  
23 personal conviction regarding repeat offenders, our  
24 criminal justice system, would you be predisposed to  
25 answer Special Issue #2 "No" so that would go into the

1 death sentence in a capital murder conviction?

2 A If you are talking about this case -- are you  
3 talking about this case?

4 Q Any capital case. I'm sorry. On this case  
5 -- I asked you based on what you know on this case and  
6 what you --

7 MR. TOWNSEND: Object, Your  
8 Honor, I know that some of the list of items he just  
9 listed were permissible items for a juror to consider,  
10 others were not and I would like him to differentiate  
11 those items.

12 MR. HINSON: I'm just asking  
13 him to consider what all he knows and if he can set that  
14 aside.

15 THE COURT: Do you understand  
16 the question?

17 THE POTENTIAL JUROR: No, sir.  
18 I don't.

19 THE COURT: Let's start over  
20 and rephrase it.

21 MR. HINSON: All right. Mr.  
22 Reese, what I was trying to -- do you understand in  
23 conjunction with Special Issue #2 is a life sentence in  
24 -- you answer "Yes", a life sentence is 35 years and he  
25 becomes eligible for parole, not that he's going to get

1 out, if you answer that question "No", it's a death  
2 sentence?

3 THE POTENTIAL JUROR: Yes.

4 Q (BY MR. HINSON) Based on what you have heard  
5 and seen, met Mr. Cole, talked to John Edwards, are you  
6 going to set this all aside, your own conviction regard  
7 repeat offenders, be able to set that aside and answer  
8 Special Issue #2 either "Yes" or "No" without leaning  
9 toward either side?

10 A Yes. I could. Sure could.

11 Q You will note there at the bottom of Special  
12 Issue #2 it says "Mitigating evidence is evidence that  
13 a juror might regard as reducing the defendant's moral  
14 blameworthiness."

15 Now, assume -- not "assuming" but we are  
16 still at Special Issue #2 and it's now your job to either  
17 answer that question with a "Yes" or "No", a life  
18 sentence or death sentence, if there's no mitigating  
19 circumstances offered by the Defendant -- I believe Mr.  
20 Lee asked something along the lines if Mr. Wardlow did  
21 not testify in either Phase I or Phase II and Mr.  
22 Wardlow's attorney puts on no evidence, no mitigating  
23 evidence and then you get to Special Issue #2 and in your  
24 own mind there hasn't been any mitigating evidence  
25 presented can you still consider, answer that question

1       either "Yes" or "No"?

2       A           Are you talking about answering the Special  
3       Issue #2?

4       Q           Yes.

5       A           Okay.

6       Q           Knowing that "Yes" he gets a life sentence of  
7       35 years plus and "No" equals the death sentence without  
8       mitigating circumstances that you saw presented to you  
9       would you still be able to consider answering that  
10      question either "Yes" or "No"?

11      A           Yes, sir. I could.

12      Q           I will direct your attention to the indictment,  
13      I believe you have a copy there.

14                   THE COURT:   That one right  
15      there.   (Indicating)

16                   MR. HINSON:   Have you found  
17      that indictment?

18                   THE POTENTIAL JUROR:   Yes.  
19      I have.

20      Q           (BY MR. HINSON)   Now, the indictment makes  
21      allegations -- you have read those allegations, they are  
22      typed out there in the middle of the page.   (Indicating)

23      A           I have read it.

24      Q           Assuming that you sat on a jury as a juror and  
25      have knowledge of having read the indictment, I believe

1 that the Court would instruct you that the indictment is  
2 not evidence for you to consider in this case, could you  
3 disregard what you just read if this case was presented  
4 to you if you were a juror?

5 A Yes. I could.

6 Q And whatever is alleged in the indictment, is  
7 that just an allegation?

8 A That's right.

9 Q I believe Mr. Lee went over with you the fact  
10 that capital murder is murder and what is charged in this  
11 case that you read from the indictment committed in the  
12 course of committing and attempting to commit the offense  
13 of robbery, another offense and the lesser included  
14 offense of capital murder is murder.

15 Let's assume that the State failed to  
16 prove to you beyond a reasonable doubt that there was no  
17 robbery, no attempt or no actual robbery committed so  
18 would you agree with me that the lesser included offense  
19 of murder would be properly considered in that case?

20 A Yes. I would.

21 Q And we talked a little bit about going over the  
22 flow chart, a defendant convicted of capital murder is  
23 faced with a life sentence or the death penalty.

24 Now, a defendant convicted of murder,  
25 the range of punishment in that case is five to 99 years

1 in the penitentiary or a life sentence and the minimum  
2 is five years probation and under the proper  
3 circumstances in a murder case could you consider giving  
4 a defendant five years probation?

5 A I could. Yes. I could.

6 I wouldn't have to like it but I could.

7 Q You said -- could you set aside your own  
8 personal conviction regarding repeat offenders, whatever  
9 your opinion is of that case, and I'm talking about any  
10 case?

11 A Yes, sir.

12 Q And consider that?

13 A Yes, sir.

14 Q And assuming that we have a defendant convicted  
15 of murder and other jurors suggest to you that five years  
16 probation is possibly a good sentence, you stated that  
17 you could consider it but you might not like it.

18 And "not liking it", what do you mean  
19 by that?

20 A Well, you asked me my feelings, opinions about  
21 the criminal system, that's the way I feel about it. I  
22 can live within, you know, what the law says, I fully  
23 agree with it. I don't have a problem with it other than  
24 I don't think that's the way it should be.

25 A man does a crime he should serve the

1 time, that's the way I look at it.

2 Q All right. Assuming that you were deliberating  
3 with other jurors, the defendant has been found guilty  
4 of murder, 11 persons on that jury say that the defendant  
5 should get five years probation and you are totally  
6 against that --

7 MR. TOWNSEND: I object, Your  
8 Honor, this question has been asked and answered.

9 He has already said he would consider  
10 the full range of punishment.

11 THE COURT: I will carry the  
12 objection until I hear the remainder of the question.

13 MR. HINSON: Eleven jurors say  
14 five years probation is a good sentence and you believe  
15 five years probation is not a good sentence, would you  
16 stick by your convictions?

17 THE COURT: Overruled.

18 MR. HINSON: Regardless of  
19 what your decision meant would you stick by your  
20 convictions and vote the way that you believed it's  
21 proper?

22 THE POTENTIAL JUROR: Yes,  
23 sir. I would.

24 Q (BY MR. HINSON) Even if it means a mistrial  
25 in that case and the whole case would have to be tried

1 again with that expense and that cost with the  
2 inconvenience to members of the community?

3 A Just because I said it was right doesn't mean  
4 I am wrong.

5 Q And I have explained to you what I believe to  
6 be -- what would be the instruction to you regarding the  
7 law of parole and that is a person would be, based on  
8 this indictment, June of '93, that a person would be  
9 eligible for parole after serving 35 calendar years.

10 Do you have any prejudices against that  
11 parole?

12 A No.

13 Q That would be invoked in this case?

14 A No. I don't.

15 Q On the other hand we talked about, said you  
16 wouldn't like looking at five years probation, said you  
17 could stand by your conviction.

18 If you didn't think that was proper do  
19 you have any prejudice in the proper circumstances of  
20 giving probation to a defendant?

21 MR. TOWNSEND: Your Honor, I  
22 want to object to this point. He has answered the  
23 question about probation being full range of punishment  
24 two or three times and that he could consider it in the  
25 proper case.

1 THE COURT: Overruled.

2 Do you understand that question?

3 THE POTENTIAL JUROR: No. I  
4 would like for you to say it one more time.

5 MR. HINSON: All right. We  
6 talked about parole -- what I was asking you about went  
7 to probation, we talked about parole, said you could set  
8 aside your personal convictions, I believe is what you  
9 said?

10 THE POTENTIAL JUROR: Yes.

11 Q (BY MR. HINSON) Do you have any personal  
12 convictions against probation?

13 Considering probation and the proper  
14 circumstances?

15 A Would I have a problem with giving probation,  
16 is that what you are saying?

17 Q Yes.

18 A I wouldn't have a problem doing it. I would  
19 -- I wouldn't like it probably but I wouldn't have a  
20 problem doing it.

21 Do you know what I mean by that?

22 That is my convictions.

23 Q Can you explain what you mean?

24 A Well, I don't really know if I can or not. I  
25 just -- I think it's a waste of taxpayer's money, you

1 know, if they are convicted and get probated -- probated  
2 sentence.

3 Q Do you know anyone personally that ever served  
4 probation in your family or --

5 A No.

6 Q -- and in a case in which you are a juror and  
7 based on what you believe about probation would that  
8 cause you to lean toward giving time in the penitentiary  
9 versus giving probation in the proper case?

10 A No.

11 Q You would start both of them off with a level  
12 field?

13 A That's right.

14 Q Set aside what your personal feelings were  
15 regarding probation?

16 A That's right.

17 THE COURT: Five minutes.

18 Mr. Hinson, I'm not going to take this  
19 from your time but I have one question for Mr. Reese.

20 Mr. Reese, I think I understand what you  
21 are saying but let me make sure I understand.

22 THE POTENTIAL JUROR: Okay.

23 THE COURT: You keep saying  
24 that you don't -- well, what you said was that you think  
25 giving probation is a waste of taxpayer's money.

1                   If you saw a case that you thought was  
2 appropriate for probation would you be able to set aside  
3 your personal feeling and give that person probation?

4                   THE POTENTIAL JUROR: Yes,  
5 sir. I could.

6                   THE COURT: I thought you  
7 could.

8                   THE POTENTIAL JUROR: What I'm  
9 trying to answer, I'm trying to answer it the way I feel  
10 about it, not the way the law, you know, how the law is  
11 going to be but the way I feel about it personally.

12                   THE COURT: You don't like it  
13 but you could do it if you thought it was the right  
14 thing?

15                   THE POTENTIAL JUROR: Right.

16                   THE COURT: All right. Thank  
17 you.

18                   All right. Mr. Hinson, five minutes.

19                   MR. HINSON: Mr. Reese, I am  
20 sure you understand that the defendant in a criminal case  
21 does not have the burden to show you anything as a juror,  
22 would you hold the State to their burden of proof in a  
23 criminal case beyond a reasonable doubt?

24                   THE POTENTIAL JUROR: Could  
25 I?

1 Q (BY MR. HINSON) Yes, sir.

2 A Yes, sir.

3 Q Even if the defendant did not testify and  
4 presented no evidence to you could you hold the State to  
5 their burden?

6 A Yes, sir.

7 Q You talked about Mr. Cole, do you know anyone  
8 other than Mr. Cole who died as a result of suspected  
9 criminal activity?

10 A No, sir. I do not.

11 Q Mr. Lee may have asked you this question, going  
12 back to the flow chart; if a person was found guilty of  
13 the offense -- guilt and innocence in Phase I?

14 A Okay.

15 Q Would you automatically in Phase II consider  
16 the death penalty a little more heavily, lean toward the  
17 death penalty in any manner?

18 A Based on -- based on what?

19 Q Based on the evidence that you have presented  
20 to you?

21 A I don't think it would weigh one way or the  
22 other heavy or what.

23 Q If the defendant was found guilty of capital  
24 murder, you come to Phase II in the punishment phase and  
25 you would start over with a clean slate again, is that

1       what you are saying?

2       A           Yes, sir.

3       Q           Whether you would give the death penalty or a  
4       life sentence?

5       A           Yes, sir.

6       Q           Would you form any opinion about a defendant  
7       merely because he's charged by an indictment and brought  
8       to trial of whether or not that defendant is guilty?

9       A           I don't follow what you are saying.

10      Q           In your own mind as you look at the indictment  
11      we looked at?

12      A           Yes.

13      Q           And we are going through jury selection here  
14      so it clearly implies that a jury will hear evidence and  
15      be presented evidence regarding the defendant's guilt?

16      A           Yes.

17      Q           Just because a person is charged by an  
18      indictment and brought to trial do you form any opinion  
19      as to that person's guilt or innocence?

20      A           No. I do not.

21      Q           Do you tend to rely more on the State's  
22      evidence if you were a juror in this case, would you give  
23      the State, the police officers and their testimony more  
24      credibility than you would the defendant?

25      A           Probably not.

1 Q When you say "probably?"

2 A I would not.

3 Q Would you be able to start off with a clean  
4 slate on Phase I, guilt and innocence, the State comes  
5 in the same position that the defendant comes in?

6 A Yes, sir.

7 Q Erasing everything out of your mind that you  
8 have heard and disregard your convictions?

9 A Yes. I could.

10 Q Have you formed any opinion as to whether time  
11 in prison or probation would be appropriate based on what  
12 you heard in this case, what you have heard about it?

13 A I don't know enough about it right now to form  
14 an opinion on it.

15 Q You will start with the presumption of -- in  
16 the United States of America that the defendant is guilty  
17 -- I'm sorry, that a defendant is innocent until guilt  
18 or until proven guilty?

19 A Yes, sir.

20 THE COURT: It's time to start  
21 wrapping it up.

22 MR. HINSON: Thank you, Your  
23 Honor.

24 One last question; as you listen --  
25 assuming that you were picked as a juror and listened to

1 the evidence in either Phase I, the guilt or innocence  
2 or Phase II, the punishment part of this trial, would you  
3 disregard what you have heard from Mr. Edwards, what you  
4 have read in the paper, disregard your personal  
5 convictions regarding prison offenders, regarding your  
6 belief on the probation system, come into one of those  
7 chairs with an open mind and with an open mind and base  
8 your decision on what is presented to you?

9 THE POTENTIAL JUROR: Yes.  
10 I could.

11 MR. HINSON: Pass the juror,  
12 Your Honor.

13 THE COURT: All right, sir.  
14 If you will step back into the waiting area and I will  
15 send the Sheriff back with some more instructions in a  
16 moment.

17 We probably will not be able to tell you  
18 whether you are on the jury but we hope to tell you by  
19 the end of the week. Okay.

20 THE BAILIFF: Watch your step  
21 there. Back in the lounge there. (Indicating)

22  
23 (The following occurred outside the  
24 presence and hearing of the potential juror:)  
25

1 THE COURT: Does the State  
2 have any challenges?

3 MR. LEE: No, Your Honor.

4 THE COURT: Does the Defendant  
5 have any challenges?

6 MR. OLD: Yes, Your Honor.

7 The Defendant would challenge the prospective juror Reese  
8 for cause based on 35.16, Section 9, Code of Criminal  
9 Procedures that is referring to the juror has a bias or  
10 prejudice in favor or against the defendant.

11 As to Mr. Reese's questionnaire, he  
12 answered on the questionnaire, "Do you know of any reason  
13 why you could not sit as a juror in this case and be  
14 absolutely fair to both Defendant and State and render  
15 a verdict based solely on the evidence presented to you?"

16 To which he answered "Yes. I do know  
17 of a reason."

18 On inquiry and questioning by His Honor  
19 in the beginning of the voir dire he indicated to you  
20 that that was true, that it was based on the fact that  
21 he knew Mr. Cole during his lifetime and more than that  
22 he knew Mr. Reese's nephew -- Mr. Cole's nephew, a "John  
23 Edwards" who was, I believe I'm characterizing his  
24 testimony correctly, "My best friend."

25 That and in addition he has also -- it

1 has been a long time ago since he had met Mr. Cole, that  
2 he thought he was a nice fellow.

3 Once he had stated that he has expressed  
4 a prejudice against the Defendant and perhaps a bias in  
5 favor of which amounts to the same thing, to the State  
6 or the State's facts and is disqualified.

7 Secondly; we would challenge him for  
8 cause as to the fact that he expressed such a prejudice  
9 against the laws of probation to the extent that he did  
10 not like law of probation, might be able to give  
11 probation but he wouldn't like it even if he gave it.

12 And as to his prejudice singularly we  
13 submit that he's challengeable for cause.

14 And it is my understanding the  
15 questionnaires are being filed in this case?

16 THE COURT: The questionnaires  
17 will be kept in three different categories, we will keep  
18 all the jurors separate, all of the challenge for cause  
19 that was sustained or overruled separate.

20 I guess that's basically how we are  
21 going to keep them so the answer is "Yes."

22 MR. OLD: They are going to  
23 be part of the record in this case as an exhibit?

24 THE COURT: The originals will  
25 be kept.

1                               You want them all as exhibits?

2                               Normally I would prefer at the request  
3       -- all jurors will be exhibits, all challenges for cause  
4       that are denied will be exhibits, if there's no  
5       challenges and they're struck I don't see any reason to  
6       keep them.

7                               MR. OLD: I did not think we  
8       needed to go through the formality of marking them at  
9       this time.

10                              THE COURT: No. Just to make  
11       it simple every juror that we talk to will have a  
12       questionnaire that will be made part of this record.

13                              MR. OLD: But if a challenge  
14       for cause is made and overruled then it will be a part  
15       of the record?

16                              THE COURT: Every one will be  
17       a part of the record, even if there's no challenges.

18                              Is that it?

19                              MR. OLD: Those are our two  
20       challenges.

21                              THE COURT: Mr. Townsend, do  
22       you wish to respond?

23                              MR. TOWNSEND: In regard to  
24       the second challenge, the probation; the juror testified  
25       that on several occasions that he would consider

1           probation and could give it in the appropriate case.

2                       I think that pretty well covers that.  
3           He's not required to like it or anything of that nature  
4           as long as he's willing to follow the law in that regard.

5                       As to his bias or prejudice in the first  
6           challenge; his testimony taken as a whole indicates no  
7           bias or prejudice. He said that his answer on the  
8           questionnaire on Page 2 was a mistake, that it was based  
9           on his misreading of the question or something of that  
10          nature, that his truthful answer was opposite to the  
11          answer that he gave on the questionnaire.

12                      He did testify to some knowledge about  
13          the case but he also testified that he could set that  
14          aside and decide the case based on the evidence.

15                      I     don't     think     there's     any  
16          disqualification.

17                               THE COURT:     Both of the  
18          challenges are overruled.

19                      The Court finds the juror to be  
20          qualified.

21                      Tell Mr. Reese that he's free to go and  
22          we will let him know something toward the end of the  
23          week.

24                               MR. OLD:     Your Honor, you  
25          indicated that we would make our first strikes I believe

1 Thursday afternoon?

2 THE COURT: I think what we  
3 should do, Mr. Old, is do all the jurors that we have and  
4 through -- let me back up; when we finish Wednesday my  
5 intent is Thursday afternoon to get you and Mr. Townsend  
6 on the record as to your strikes or acceptance of the  
7 jurors through Wednesday jurors, not Thursday morning.

8 MR. OLD: Okay.

9 THE COURT: So Thursday  
10 morning we will go back into the next pool, if we want  
11 to continue doing them the same way and I assume that  
12 both sides do.

13 MR. OLD: Your Honor, as to  
14 -- we need some time to sit down with our client in  
15 the jury room or some place where we can meet in order  
16 to --

17 THE COURT: "Talk?"

18 MR. OLD: "Talk."

19 Would the Court consider either  
20 Wednesday afternoon or Thursday prior to the time he has  
21 given us?

22 I don't think it will take more than an  
23 hour, I'm not sure it will take that long. I would like  
24 the luxury of knowing I have that long.

25 THE COURT: I will give you

1       one hour but I need to know tomorrow whether or not you  
2       want to bring in these three people.

3                       MR. OLD:   Yes.

4                       THE COURT:  You don't want to  
5       bring them in?

6                       MR. OLD:  I will let you know  
7       tomorrow.

8                       THE COURT:  Same for you, Mr.  
9       Townsend, if you believe you have a need to talk to these  
10      three jurors we gave the wrong information to let me  
11      know.

12                      Frankly if both of you have agreed to  
13      strike them I don't want to talk to them but I'm not  
14      going to make you tell me what you are going to do, I  
15      just ask for you to be reasonable.

16                      MR. TOWNSEND:  You are talking  
17      about Ms. Lee, Ms. Littles and Ms. Edwards?

18                      THE COURT:  Correct.

19                      All right.  We are in recess.

20  
21                      (Record closed for October 31st, 1994.)

22  
23                      (Whereupon Court was recessed until 9:00  
24      a.m., November 1st, 1994.)

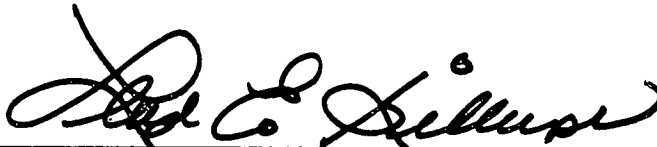
25                      \*\*\*\*\*

1 STATE OF TEXAS §  
 2 COUNTY OF TITUS §

3  
 4 I, Lloyd E. Billups, CSR #149 and  
 5 Official Court Reporter in and for the 76th Judicial  
 6 District, State of Texas, do hereby certify that the  
 7 above and foregoing contains a true and correct  
 8 transcription of the proceedings in the above-styled and  
 9 numbered cause, all of which occurred in open court or  
 10 in chambers on October 31, 1994 and were reported by me.

11 I further certify that this  
 12 transcription of the record of the proceedings truly and  
 13 correctly reflects the exhibits, if any, offered by the  
 14 respective parties.

15 WITNESS MY HAND this 31<sup>ST</sup> day of  
 16 January, 1995.

17 

18 LLOYD E. BILLUPS, CSR #149 & OFFICIAL COURT REPORTER  
 19 76TH JUDICIAL DISTRICT, STATE OF TEXAS

1 Certification Number of Reporter: 149

2 Expiration Date of Certification: 12/31/96

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